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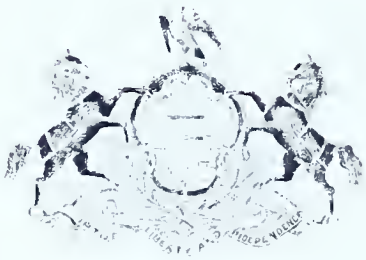

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Publications of the

Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 32

Carnegie Endowment for International Peace
DIVISION OF INTERNATIONAL LAW
Pamphlet No. 32

VIOLATION OF THE LAWS AND CUSTOMS OF WAR

Reports of Majority and Dissenting Reports of
AMERICAN AND JAPANESE MEMBERS
of the Commission of Responsibilities
CONFERENCE OF PARIS
1919

PUBLISHED FOR THE ENDOWMENT
OXFORD: AT THE CLARENDON PRESS
London, Edinburgh, New York, Toronto, Melbourne, Cape Town, Bombay
HUMPHREY MILFORD
1919

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INTRODUCTORY NOTE

The Peace Conference at Paris, composed of representatives of the Allied and Associated Powers at war with Germany and its allies, was formally opened by Mr. Raymond Poincaré, President of the French Republic, on January 18, 1919, exactly forty-eight years to a day after the proclamation of the German Empire in the Palace of Versailles, to undo the consequences of the acts of that Government in general, and in particular to undo the wrong done to Alsace-Lorraine in 1871. At the second plenary session of the Conference, held on January 25, 1919, a Commission was appointed to inquire into and to report upon the violations of international law committed by Germany and its allies during the course of the war, from July 28, 1914, the date of the Austro-Hungarian declaration of war against Serbia, and November 11, 1918, the date of the armistice granted by the Allied and Associated Powers to Germany, upon the request of then Imperial German Government.

The Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties was unable to reach conclusions acceptable to all of its members on all the subjects submitted to its consideration. It presented a report from which the American and Japanese members felt themselves obliged to dissent. The Conference, finding itself in the presence of majority and minority opinions, directed its *Comité de Rédaction* to draft a series of articles on this subject, to be included in the proposed treaty of peace, and which under the title of 'Sanctions' in French and 'Penalties' in English actually form Part VII of the Conditions of Peace handed on

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May 7, 1919, to the German Plenipotentiaries to conclude peace assembled at Versailles.

The laws and customs of war are binding upon all nations. They should be faithfully observed, breaches of them punished, and persons accused of their violation brought to trial. The extent to which this is believed to be possible, the tribunals before which the accused should be tried, and the procedure to be followed are stated in the report of the majority, the dissenting opinions of the minority of the Commission, and the provisions of the proposed treaty. These various documents are therefore brought together, and, to keep them within reasonable compass, they are printed in English only, inasmuch as by action of the Conference 'the French and English texts are both authentic'.

JAMES BROWN SCOTT,
Technical Delegate of the United States
to the Peace Conference of Paris.

PARIS, *May* 18, 1919.

CONDITIONS OF PEACE

PART VII

PENALTIES

Article 227

The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties.

A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defence. It will be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy, and Japan.

In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed.

The Allied and Associated Powers will address a request to the Government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial.

Article 228

The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office, or employment which they held under the German authorities.

ARTICLE 229

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

ARTICLE 230

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders, and the just appreciation of responsibility.

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COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS OF THE WAR AND ON ENFORCEMENT OF PENALTIES

THE Preliminary Peace Conference at the plenary Session on the 25th January, 1919 (Minute No. 2), decided to create, for the purpose of enquiring into the responsibilities relating to the war, a Commission composed of fifteen members, two to be named by each of the Great Powers (United States of America, British Empire, France, Italy and Japan) and five elected from among the Powers with special interests.

The Commission was charged to enquire into and report upon the following points :—

1. The responsibility of the authors of the war.
2. The facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air during the present war.
3. The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.
4. The constitution and procedure of a tribunal appropriate for the trial of these offences.
5. Any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

At a meeting of the Powers with special interests held on the 27th January, 1919, Belgium, Greece, Poland, Roumania and Serbia were chosen as the Powers who should name representatives. (Minute No. 2. Annex VI.)

After the several States had nominated their respective representatives, the Commission was constituted as follows :—

United States of America :

Hon. Robert Lansing.

Major James Brown Scott.

British Empire :

The Rt. Hon. Sir Gordon Hewart, K.C., M.P.

or

Sir Ernest Pollock, K.B.E., K.C., M.P.

The Rt. Hon. W. F. Massey.

France :

Mr. André Tardieu.

(Alternate : Captain R. Masson.)

Mr. F. Larnaude.

Italy :

Mr. Scialoja.

(Alternates : Mr. Rieci Busatti, Mr. G. Tosti.)

Mr. Raimondo. Later, Mr. Brambilla (3rd February) ; Mr. M. d'Amelio (16th February).

Japan :

Mr. Adatci.

Mr. Nagaoka. Later, Mr. S. Taehi (15th February).

Belgium :

Mr. Rolin-Jaequemyns.

Greece :

Mr. N. Politis.

Poland :

Mr. C. Skirmunt. Later, Mr. N. Lubienski (14th February).

Roumania :

Mr. S. Rosental.

Serbia :

Professor Slobodan Yovanovitch.

(Alternates : Mr. Koumanoudi, Mr. Novacovitch.)

Mr. Lansing was selected as Chairman of the Commission, and as Vice-Chairmen, Sir Gordon Hewart or Sir Ernest Pollock and Mr. Scialoja. Mr. A. de Lapradelle (France) was named General Secretary and the Secretaries of the Commission were :—

Mr. A. Kirk, United States of America ; Lieutenant-Colonel O. M. Biggar, British Empire ; Mr. G. H. Tosti, Italy ; Mr. Kuriyama, Japan ; Lieutenant Baron J. Guillaume, Belgium ; Mr. Spyridion Marchetti, Greece ; Mr. Casimir Rybinski, Poland.

Mr. G. H. Carmerlynck, *Professeur agrégé* of the University of France, acted as interpreter to the Commission.

The Commission decided to appoint three Sub-Commissions.

Sub-Commission I, on Criminal Acts, was instructed to discover

and collect the evidence necessary to establish the facts relating to culpable conduct which (*a*) brought about the world war and accompanied its inception, and (*b*) took place in the course of hostilities.

This Sub-Commission selected Mr. W. F. Massey as its Chairman.

Sub-Commission II, on the Responsibility for the War, was instructed to consider whether, on the facts established by the Sub-Commission on Criminal Acts in relation to the conduct which brought about the world war and accompanied its inception, prosecutions could be instituted, and, if it decided that prosecutions could be undertaken, to prepare a report indicating the individual or individuals who were, in its opinion, guilty, and the Court before which prosecutions should proceed.

This Sub-Commission selected alternatively Sir Gordon Hewart or Sir Ernest Pollock as Chairman.

Sub-Commission III, on the Responsibility for the Violation of the Laws and Customs of War, was instructed to consider whether, on the facts established by the Sub-Commission on Criminal Acts in relation to conduct which took place in the course of hostilities, prosecutions could be instituted, and if it decided that prosecutions could be undertaken, to prepare a report indicating the individual or individuals who were, in its opinion, guilty, and the Court before which prosecutions should proceed.

This Sub-Commission selected Mr. Lansing as its Chairman.

When the reports of the Sub-Commissions had been considered, a committee composed of Mr. Rolin-Jaequemyns, Sir Ernest Pollock and Mr. M. d'Amelio was appointed to draft the report of the Commission. This Committee was assisted by Mr. A. de Lapradelle and Lieutenant-Colonel O. M. Biggar.

The Commission has the honour to submit its report to the Preliminary Peace Conference. The report was adopted unanimously subject to certain reservations by the United States of America and certain other reservations by Japan. The United States Delegation has set forth its reservations and the reasons therefor in a memorandum attached hereto (Annex II) and the same course has been taken by the Japanese Delegation (Annex III).

REPORT

PRESENTED TO THE PRELIMINARY PEACE CONFERENCE

BY THE

COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS OF THE WAR

AND ON

ENFORCEMENT OF PENALTIES

CHAPTER I

RESPONSIBILITY OF THE AUTHORS OF THE WAR

On the question of the responsibility of the authors of the war, the Commission, after having examined a number of official documents relating to the origin of the world war, and to the violations of neutrality and of frontiers which accompanied its inception, has determined that the responsibility for it lies wholly upon the Powers which declared war in pursuance of a policy of aggression, the concealment of which gives to the origin of this war the character of a dark conspiracy against the peace of Europe.

This responsibility rests first on Germany and Austria, secondly on Turkey and Bulgaria. The responsibility is made all the graver by reason of the violation by Germany and Austria of the neutrality of Belgium and Luxemburg, which they themselves had guaranteed. It is increased, with regard to both France and Serbia, by the violation of their frontiers before the declaration of war.

I.—Premeditation of the War

A.—*Germany and Austria*

Many months before the crisis of 1914 the German Emperor had ceased to pose as the champion of peace. Naturally believing in the overwhelming superiority of his army, he openly showed his

enmity towards France. General von Moltke said to the King of the Belgians : 'This time the matter must be settled.' In vain the King protested. The Emperor and his Chief of Staff remained no less fixed in their attitude.[1]

On the 28th June, 1914, occurred the assassination at Sarajevo of the heir-apparent of Austria. 'It is the act of a little group of madmen,' said Francis Joseph.[2] The act, committed as it was by a subject of Austria-Hungary on Austro-Hungarian territory, could in no wise compromise Serbia, which very correctly expressed its condolences[3] and stopped public rejoicings in Belgrade. If the Government of Vienna thought that there was any Serbian complicity, Serbia was ready[4] to seek out the guilty parties. But this attitude failed to satisfy Austria and still less Germany, who, after their first astonishment had passed, saw in this royal and national misfortune a pretext to initiate war.

At Potsdam a 'decisive consultation' took place on the 5th July, 1914.[5] Vienna and Berlin decided upon this plan : 'Vienna will send to Belgrade a very emphatic ultimatum with a very short limit of time.'[6]

The Bavarian Minister, von Lerchenfeld, said in a confidential despatch dated the 18th July, 1914, the facts stated in which have never been officially denied : 'It is clear that Serbia cannot accept the demands, which are inconsistent with the dignity of an independent State.'[7] Count Lerchenfeld reveals in this report that, at the time it was made, the ultimatum to Serbia had been jointly decided upon by the Governments of Berlin and Vienna ; that they were waiting to send it until President Poincaré and M. Viviani should have left for St. Petersburg ; and that no illusions were cherished, either at Berlin or Vienna, as to the consequences which this threatening measure would involve. It was perfectly well known that war would be the result.

The Bavarian Minister explains, moreover, that the only fear of the Berlin Government was that Austria-Hungary might hesitate and draw back at the last minute, and that on the other hand Serbia, on the advice of France and Great Britain, might yield to the pressure put upon her. Now, 'the Berlin Government considers that war is necessary.' Therefore, it gave full powers to Count Berchtold, who instructed the Ballplatz on the 18th July, 1914, to

[1] Yellow Book, M. Cambon to M. Pichon, 22nd November, 1913.
[2] Message to his people.
[3] Serbian Blue Book, page 30.
[4] Yellow Book, No. 15, M. Cambon to M. Bienvenu Martin, 21st July, 1914.
[5] Lichnowsky Memoir.
[6] Dr. Muehlon's Memoir.
[7] Report of the 18th July, 1914.

negotiate with Bulgaria to induce her to enter into an alliance and to participate in the war.

In order to mask this understanding, it was arranged that the Emperor should go for a cruise in the North Sea, and that the Prussian Minister of War should go for a holiday, so that the Imperial Government might pretend that events had taken it completely by surprise.

Austria suddenly sent Serbia an ultimatum that she had carefully prepared in such a way as to make it impossible to accept. Nobody could be deceived; 'the whole world understands that this ultimatum means war.' [1] According to M. Sazonof, 'Austria-Hungary wanted to devour Serbia.' [2]

M. Sazonof asked Vienna for an extension of the short time limit of forty-eight hours given by Austria to Serbia for the most serious decision in its history.[3] Vienna refused the demand. On the 24th and 25th July England and France multiplied their efforts to persuade Serbia to satisfy the Austro-Hungarian demands. Russia threw in her weight on the side of conciliation.[4]

Contrary to the expectation of Austria-Hungary and Germany, Serbia yielded. She agreed to all the requirements of the ultimatum, subject to the single reservation that, in the judicial enquiry which she would commence for the purpose of seeking out the guilty parties, the participation of Austrian officials would be kept within the limits assigned by international law. 'If the Austro-Hungarian Government is not satisfied with this,' Serbia declared she was ready 'to submit to the decision of the Hague Tribunal.' [5]

A quarter of an hour before the expiration of the time limit, at 5.45 on the 25th, M. Pachich, the Serbian Minister of Foreign Affairs, delivered this reply to Baron Geisl, the Austro-Hungarian Minister. On M. Pachich' return to his own office he found awaiting him a letter from Baron Geisl saying that he was not satisfied with the reply. At 6.30 the latter had left Belgrade, and even before he had arrived at Vienna, the Austro-Hungarian Government had handed his passports to M. Yovanovitch, the Serbian Minister, and had prepared thirty-three mobilisation proclamations, which were published on the following morning in the 'Budapesti Kozlöni,' the official gazette of the Hungarian Government. On the 27th Sir Maurice de Bunsen telegraphed to Sir Edward Grey: 'This

[1] Lichnowsky Memoir.
[2] Austro-Hungarian Red Book, No. 16.
[3] Blue Book, No. 26.
[4] Yellow Book, No. 36; Blue Book, Nos. 12, 46, 55, 65, 94, 118.
[5] Yellow Book, No. 46.

country has gone wild with joy at the prospect of war with Serbia.' [1] At midday on the 28th Austria declared war on Serbia. On the 29th the Austrian Army commenced the bombardment of Belgrade, and made its dispositions to cross the frontier.

The reiterated suggestions of the *Entente* Powers with a view to finding a peaceful solution of the dispute only produced evasive replies on the part of Berlin or promises of intervention with the Government of Vienna without any effectual steps being taken.

On the 24th of July Russia and England asked that the Powers should be granted a reasonable delay in which to work in concert for the maintenance of peace. Germany did not join in this request.[2]

On the 25th July Sir Edward Grey proposed mediation by four Powers (England, France, Italy and Germany). France [3] and Italy [4] immediately gave their concurrence. Germany [5] refused, alleging that it was not a question of mediation but of arbitration, as the Conference of the four Powers was called to make proposals, not to decide.

On the 26th July Russia proposed to negotiate directly with Austria. Austria refused.[6]

On the 27th July England proposed a European Conference. Germany refused.[7]

On the 29th July Sir Edward Grey asked the Wilhelmstrasse to be good enough to ' suggest any method by which the influence of the four Powers could be used together to prevent a war between Austria and Russia.' [8] She was asked herself to say what she desired.[9] Her reply was evasive.[10]

On the same day, the 29th July, the Czar Nicholas II despatched to the Emperor William II a telegram suggesting that the Austro-Serbian problem should be submitted to the Hague Tribunal. This suggestion received no reply. This important telegram does not appear in the German White Book. It was made public by the Petrograd ' Official Gazette ' (January 1915).

The Bavarian Legation, in a report dated the 31st July, declared its conviction that the efforts of Sir Edward Grey to preserve peace would not hinder the march of events.[11]

[1] Blue Book, No. 41.
[2] Russian Orange Book, No. 4, Yellow Book, No. 43.
[3] Yellow Book, No. 70.
[4] Yellow Book, No. 72, Blue Book, No. 49.
[5] Blue Book, No. 43.
[6] Yellow Book, No. 54.
[7] Yellow Book, Nos. 68 and 73.
[8] Yellow Book, No. 97. Blue Book, No. 84.
[9] Blue Book, No. 111.
[10] Yellow Book, 97, 98 and 109.
[11] Second Report of Count Lerchenfeld, Bavarian Plenipotentiary at Berlin, published on the instructions of Kurt Eisner.

As early as the 21st July German mobilisation had commenced by the recall of a certain number of classes of the reserve,[1] then of German officers in Switzerland,[2] and finally of the Metz garrison on the 25th July.[3] On the 26th July the German fleet was called back from Norway.[4]

The *Entente* did not relax its conciliatory efforts, but the German Government systematically brought all its attempts to nought. When Austria consented for the first time on the 31st July to discuss the contents of the Serbian Note with the Russian Government and the Austro-Hungarian Ambassador received orders to 'converse' with the Russian Minister of Foreign Affairs,[5] Germany made any negotiation impossible by sending her ultimatum to Russia. Prince Lichnowsky wrote that 'a hint from Berlin would have been enough to decide Count Berchtold to content himself with a diplomatic success and to declare that he was satisfied with the Serbian reply, but this hint was not given. On the contrary they went forward towards war.'[6]

On the 1st August the German Emperor addressed a telegram to the King of England[7] containing the following sentence: 'The troops on my frontier are, at this moment, being kept back by telegraphic and telephonic orders from crossing the French frontier.'

Now, war was not declared till two days after that date, and as the German mobilisation orders were issued on that same day, the 1st August, it follows that, as a matter of fact, the German army had been mobilised and concentrated in pursuance of previous orders.

The attitude of the *Entente* nevertheless remained still to the very end so conciliatory that, at the very time at which the German fleet was bombarding Libau, Nicholas II gave his word of honour to William II that Russia would not undertake any aggressive action during the pourparlers,[8] and that when the German troops commenced their march across the French frontier M. Viviani telegraphed to all the French Ambassadors 'we must not stop working for accommodation.'

On the 3rd August von Schoen went to the Quai d'Orsay with the declaration of war against France. Lacking a real cause of complaint, Germany alleged, in her declaration of war, that bombs

[1] Yellow Book, No. 15.
[2] Yellow Book, No. 60.
[3] Yellow Book, No. 106.
[4] Yellow Book, No. 58.
[5] Blue Book, No. 133, Red Book, No. 55.
[6] Lichnowsky Memoir, p. 1.
[7] White Book, Anlage 32; Yellow Book, Annex II *bis*, No. 2.
[8] Telegram from Nicholas II to William II. Yellow Book No. 6, Annex V.

had been dropped by French aeroplanes in various districts in Germany. This statement was entirely false. Moreover, it was either later admitted to be so [1] or no particulars were ever furnished by the German Government.

Moreover, in order to be manifestly above reproach. France was careful to withdraw her troops 10 kilom. from the German frontier. Notwithstanding this precaution, numerous officially established violations of French territory preceded the declaration of war.[2]

The provocation was so flagrant that Italy, herself a member of the Triple Alliance, did not hesitate to declare that in view of the aggressive character of the war the *casus fœderis* ceased to apply.[3]

B.—*Turkey and Bulgaria*

The conflict was, however, destined to become more widespread, and Germany and Austria were joined by allies.

Since the Balkan war the Young Turk Government had been drawing nearer and nearer Germany, whilst Germany on her part had constantly been extending her activities at Constantinople.

A few months before war broke out, Turkey handed over the command of her military and naval forces to the German General Liman von Sanders and the German Admiral Souchon.

In August, 1914, the former, acting under orders from the General Headquarters at Berlin, caused the Turkish Army to begin mobilising.[4]

Finally, on the 4th August, the understanding between Turkey and Germany was definitely formulated in an alliance.[5] The consequence was that when the 'Goeben' and the 'Breslau' took refuge in the Bosphorus, Turkey closed the Dardanelles against the *Entente* squadrons and war followed.

On the 14th October, 1915, Bulgaria declared war on Serbia, which country had been at war with Austria since the 28th July,

[1] Statement of the Municipality of Nuremburg, dated the 3rd April, 1916.

[2] Patrols of various strengths crossed the French frontier at fifteen points, one on the 30th July at Xures, eight on the 2nd August, and the others on the 3rd August, before war was declared. The French troops lost one killed and several wounded. The enemy left on French territory four killed, one of whom was an officer, and seven prisoners. At Suarce, on the 2nd August, the enemy carried off nine inhabitants, twenty-five horses, and thirteen carriages. Four incursions by German dirigibles took place between the 25th July and the 1st August. Finally, German aeroplanes flew over Lunéville on the 3rd August, before the declaration of war. and dropped six bombs. (Yellow Book, Nos. 106, 136, 139 &c.)

[3] Yellow Book, No. 124.

[4] H. Morganthau, 'Secrets of the Bosphorus,' London, 1918, pp. 39, 40.

[5] German White Book, 1913, 1917, Nos. 19 and 20.

1914, and had been attacked on all fronts by a large Austro-German army since the 6th October, 1915. Serbia had, however, committed no act of provocation against Bulgaria.

Serbia never formulated any claim against Bulgaria during the negotiations which took place between the *Entente* Powers and Bulgaria prior to the latter's entry into the war. On the contrary, she was offering herself ready to make certain territorial concessions to Bulgaria in order to second the efforts of the *Entente* Powers to induce Bulgaria to join them. According to Count Lerchenfeld's reports, however, Bulgaria had begun negotiations with the Central Powers as early as the 18th July, 1914, with a view to entering the war on their side. In April, 1915, the Bulgars made an armed attack against Serbia near Valandovo and Struvmitza, where a real battle was fought on Serbian territory. Being defeated, the Bulgars retired, ascribing this act of aggression to some comitadjis. An International Commission (composed of representatives of the *Entente*) discovered, however, that there had been Bulgarian regular officers and soldiers among the dead and the prisoners.[1]

On the 6th September, 1915, Bulgaria and Austria-Hungary concluded a treaty which recited that they had agreed to undertake common military action against Serbia and by which Austria-Hungary guaranteed to Bulgaria certain accretions of territory at Serbia's expense, and also agreed, jointly with Germany, to make to the Bulgarian Government a war loan of 200,000,000 fr., to be increased if the war lasted more than four months.[2] Even after this, M. Malinoff, one of the former Prime Ministers of Bulgaria, took part in negotiations with the *Entente*, and, while these negotiations were continuing, Bulgaria, on the 23rd September, mobilised, ostensibly to defend her neutrality.

No sooner had the army been mobilised and concentrated and Bulgarian forces massed on the whole length of the Serbian frontier, than the Bulgarian Government openly and categorically repudiated M. Malinoff, stating that he was in no way qualified to commit Bulgaria, and that he deserved 'to be subjected to the utmost rigour of his country's laws for his conduct on that occasion.' Some days later, Austro-German troops crossed the Danube and began to invade Serbia.

As soon as the Serbian troops began to retire, the Bulgars, on the pretext that the former had violated their frontier, launched

[1] Memorandum I of the Serbian Delegation, Chapter II, para. *c*.

[2] Treaty between Bulgaria and Austria-Hungary, dated the 24th August, 1915 (furnished by the Serbian Delegation).

the attack which eventually led to the complete subjugation of Serbia.

Two documents in the possession of the Serbian Government prove that this incident on the frontier was 'arranged' and represented as a Serbian provocation. On the 10th October, 1915, the Secretary-General to the Foreign Office at Sofia, at the request of the Bulgarian Minister for Foreign Affairs, sent the following communication to Count Tarnovski, Austro-Hungarian Minister at Sofia :—'In order to divest the attack on Serbia of the appearance of a preconceived plot, we shall, this evening or to-morrow morning, provoke a frontier incident in some uninhabited region.'[1] Also, on the 12th October, 1915, Count Tarnovski sent the following telegram to Vienna :—'The Generalissimo informs me that the desired incident on the Serbian frontier was arranged yesterday.'[2]

Bulgaria, in fact, first attacked on the 12th October, 1915, two days before the declaration of war on Serbia, which took place on the 14th October, 1915. That this was the case does not prevent Bulgaria from asserting that the Serbs first crossed her frontier.

The above sequence of events proves that Bulgaria had premeditated war against Serbia, and perfidiously brought it about.

By means of German agents Enver Pasha and Talaat Pasha had, since the spring of 1914, been aware of the Austro-German plan, *i.e.*, an attack by Austria against Serbia, the intervention by Germany against France, the passage through Belgium, the occupation of Paris in a fortnight, the closing of the Straits by Turkey, and the readiness of Bulgaria to take action.

The Sultan acknowledged this plot to one of his intimates. It was indeed nothing but a plot engineered by heads of four States against the independence of Serbia and the peace of Europe.[3]

CONCLUSIONS

1. **The war was premeditated by the Central Powers together with their Allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable.**
2. **Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the Entente Powers and their repeated efforts to avoid war.**

[1] Memorandum I of the Serbian Delegation, Chapter II, para. *c*.
[2] Memorandum of the Serbian Delegation, I. Chapter II, para. *c*.
[3] Basri, 'L'Orient débalkanisé,' chapter II (Paris, 1919).

II.—Violation of the Neutrality of Belgium and Luxemburg

A.—*Belgium*

Germany is burdened by a specially heavy responsibility in respect of the violation of the neutrality of Belgium and Luxemburg. Article 1 of the Treaty of London of the 19th April, 1839, after declaring that Belgium should form a 'perpetually neutral State,' had placed this neutrality under the protection of Austria, France, Great Britain, Russia and Prussia. On the 9th August, 1870, Prussia had declared 'her fixed determination to respect Belgian neutrality.' On the 22nd July, 1870, Bismarck wrote to the Belgian Minister at Paris, 'This declaration is rendered superfluous by existing treaties.'

It may be of interest to recall that the attributes of neutrality were specifically defined by the fifth Hague Convention, of the 18th October, 1907. That Convention was declaratory of the law of nations, and contained these provisions—'The territory of neutral Powers is inviolable' (Article 1). 'Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power' (Article 2). 'The fact of a neutral Power resisting, even by force, attempts against its neutrality cannot be regarded as a hostile act' (Article 10).

There can be no doubt of the binding force of the treaties which guaranteed the neutrality of Belgium. There is equally no doubt of Belgium's sincerity or of the sincerity of France in their recognition and respect of this neutrality.

On the 29th July, 1914, the day following the declaration of war by Austria-Hungary against Serbia, Belgium put her army on its reinforced peace strength, and so advised the Powers by which her neutrality was guaranteed and also Holland and Luxemburg.[1]

On the 31st July the French Minister at Brussels visited the Belgian Minister of Foreign Affairs to notify him of the state of war proclaimed in Germany and he spontaneously made the following statement: 'I seize this opportunity to declare that no incursion of French troops into Belgium will take place, even if considerable forces are massed upon the frontiers of your country. France does not wish to incur the responsibility, so far as Belgium is concerned, of taking the first hostile act. Instructions in this sense will be given to the French authorities.'[2]

On the 1st August, the Belgian Army was mobilised.[3]

[1] Grey Book I, No. 8. [2] Grey Book I, No. 9. [3] Grey Book I, No. 10.

On the 31st July, the British Government had asked the French and German Governments separately if they were each of them ready to respect the neutrality of Belgium, provided that no other Power violated it.[1] In notifying the Belgian Government on the same day of the action taken by the British Government, the British Minister added : ' In view of existing treaties, I am instructed to inform the Belgian Minister for Foreign Affairs of the above, and to say that Sir Edward Grey presumes that Belgium will do her utmost to maintain her neutrality, and that she desires and expects that the other Powers will respect and maintain it.' [2] The immediate and quite definite reply of the Belgian Minister of Foreign Affairs was that Great Britain and the other nations guaranteeing Belgian independence could rest assured that she would neglect no effort to maintain her neutrality.[3]

On the same day, Paris and Berlin were officially asked the question to which reference was made in the British communication. At Paris the reply was categorical : ' The French Government are resolved to respect the neutrality of Belgium, and it would only be in the event of some other Power violating that neutrality that France might find herself under the necessity, in order to assure the defence of her own security, to act otherwise.' [4]

On the same day as this reply was made at Paris, the French Minister at Brussels made the following communication to M. Davignon, the Belgian Minister of Foreign Affairs :—' I am authorised to declare that, in the event of an international war, the French Government, in accordance with the declarations they have always made, will respect the neutrality of Belgium. In the event of this neutrality not being respected by another Power, the French Government, to secure their own defence, might find it necessary to modify their attitude.' [5]

It was decided that this communication should forthwith be made to the Belgian press.

Meanwhile the attitude of the German Government remained enigmatic. At Brussels the German Minister, Herr von Below, made efforts in his discussions to maintain confidence [6] ; but at Berlin, in reply to the question which had been officially asked by the British Government, the Secretary of State informed the British Ambassador that ' he must consult the Emperor and the Chancellor before he could possibly answer.' [7]

[1] Grey Book I, No. 10. [2] Grey Book I, No. 11. [3] Grey Book I, No. 11.
[4] Blue Book, No. 125. [5] Grey Book I, No. 15. [6] Grey Book I, No. 19.
[7] Blue Book, No. 122.

On the 2nd August, in the course of the day, Herr von Below insisted to the Belgian Minister, M. Davignon, upon the feelings of security which Belgium had the right to entertain towards her eastern neighbour,[1] and on the same day, at 7 o'clock in the evening, he sent him a 'very confidential' note, which was nothing more than an ultimatum claiming free passage for German troops through Belgian territory.[2]

It was impossible to be under any delusion as to the purely imaginary character of the reason alleged by the German Government in support of its demand. It pretended that it had reliable information leaving 'no doubt as to the intention of France to move through Belgian territory' against Germany, and consequently had notified its decision to direct its forces to enter Belgium.[3]

The facts themselves supply the answer to the German allegation that France intended to violate Belgian neutrality. According to the French plan of mobilisation, the French forces were being concentrated at that very moment on the German frontier, and it was necessary, by reason of the situation created by the German violation of Belgian territory, to modify the arrangements for their transport.

In the meantime, at seven o'clock in the morning of the 3rd August, at the expiration of the time limit fixed by the ultimatum, Belgium had sent her reply to the German Minister. Affected neither by Germany's promises nor her threats, the Belgian Government boldly declared that an attack upon Belgian independence would constitute a flagrant violation of international law. 'No strategic interest justifies such a violation of law. The Belgian Government, if they were to accept the proposals submitted to them, would sacrifice the honour of the nation and betray their duty towards Europe.' In conclusion, the Belgian Government declared that they were 'firmly resolved to repel by all the means in their power every attack upon their rights.'[4]

Even on the 3rd August, Belgium refused to appeal to the guarantee of the Powers until there was an actual violation of territory.[5] It was only on the 4th August, after German troops had entered Belgian territory, that the Belgian Government sent his passports to Herr von Below,[6] and it then appealed to Great Britain, France and Russia to co-operate as guaranteeing Powers in the defence of her territory.[7]

[1] Grey Book I, No. 19. [2] Grey Book I, No. 20. [3] Grey Book I, No. 20.
[4] Grey Book I, No. 22. [5] Grey Book I, No. 24. [6] Grey Book I, No. 30.
[7] Grey Book I, No. 42.

At this point it may be recalled that the pretext invoked by Germany in justification of the violation of Belgian neutrality, and the invasion of Belgian territory, seemed to the German Government itself of so little weight, that in Sir Edward Goschen's conversations with the German Chancellor, von Bethmann Hollweg, and with von Jagow, the Secretary of State, it was not a question of aggressive French intentions, but a 'matter of life and death to Germany to advance through Belgium and violate the latter's neutrality,' and of 'a scrap of paper'.[1] Further, in his speech on the 4th August, the German Chancellor made his well-known avowal: 'Necessity knows no law. Our troops have occupied Luxemburg, and perhaps have already entered Belgian territory. Gentlemen, that is a breach of international law. . . . We have been obliged to refuse to pay attention to the justifiable protests of Belgium and Luxemburg. The wrong—I speak openly—the wrong we are thereby committing we will try to make good as soon as our military aims have been attained. He who is menaced, as we are, and is fighting for his all can only consider how he is to hack his way through.' To this avowal of the German Chancellor there is added the overwhelming testimony of Count von Lerchenfeld, who stated in a report of the 4th August, 1914, that the German General Staff considered it 'necessary to cross Belgium: France can only be successfully attacked from that side. At the risk of bringing about the intervention of England, Germany cannot respect Belgian neutrality.'[2]

As for the Austrian Government, it waited until the 28th August to declare war against Belgium,[3] but as early as the middle of the month 'the motor batteries sent by Austria have proved their excellence in the battles around Namur',[4] as appears from a proclamation of the German general who at the time was in command of the fortress of Liége, which German troops had seized. Consequently, the participation of Austria-Hungary in the violation of Belgian neutrality is aggravated by the fact that she took part in that violation without any previous declaration of war.

B.—*Luxemburg*

The neutrality of Luxemburg was guaranteed by Article 2 of the Treaty of London, 11th May, 1867, Prussia and Austria-Hungary

[1] Blue Book, No. 160.

[2] Stenographische Berichte über die Verhandlungen des Reichstags, Dienstag, 4 August, 1914. See also E. Mühler, 'Des Weltkriegen und das Völkerrecht,' Berlin, G. Reimer, 1915, pp. 24 *et seq.*

[3] Grey Book I, No. 77.

[4] Grey Book II, No. 104.

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being two of the guarantor Powers. On the 2nd August, 1914, German troops penetrated the territory of the Grand Duchy. Mr. Eyschen, Minister of State of Luxemburg, immediately made an energetic protest.[1]

The German Government alleged 'that military measures had become inevitable, because trustworthy news had been received that French forces were marching on Luxemburg.' This allegation was at once refuted by Mr. Eyschen.[2]

CONCLUSION

The neutrality of Belgium, guaranteed by the Treaties of the 19th April, 1839, and that of Luxemburg, guaranteed by the Treaty of the 11th May, 1867, were deliberately violated by Germany and Austria-Hungary.

CHAPTER II

VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR

On the second point submitted by the Conference, *the facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their allies on land, on sea, and in the air, during the present war*, the Commission has considered a large number of documents. The Report of the British Commission drawn up by Lord Bryce, the labours of the French Commission presided over by M. Payelle, the numerous publications of the Belgian Government, the Memorandum submitted by the Belgian Delegation, the Memorandum of the Greek Delegation, the documents lodged by the Italian Government, the formal denunciation by the Greeks at the Conference of the crimes committed against Greek populations by the Bulgars, Turks and Greeks, the Memorandum of the Serbian Delegation, the Report of the Inter-Allied Commission on the violations of the Hague Conventions and of international law in general, committed between 1915 and 1918 by the Bulgars in occupied Serbia, the summary of the Polish Delegation, together with the Roumanian and Armenian Memoranda, supply abundant evidence of outrages of every description committed on land, at sea, and in the air, against the laws and customs of war and of the laws of humanity.

In spite of the explicit regulations, of established customs, and of

[1] Yellow Book, No. 131.
[2] Telegram to the German Ministry of Foreign Affairs, the 2nd August, 1914.

the clear dictates of humanity, Germany and her allies have piled outrage upon outrage. Additions are daily and continually being made. By way of illustration a certain number of examples have been collected in Annex I. It is impossible to imagine a list of cases so diverse and so painful. Violations of the rights of combatants, of the rights of civilians, and of the rights of both, are multiplied in this list of the most cruel practices which primitive barbarism, aided by all the resources of modern science, could devise for the execution of a system of terrorism carefully planned and carried out to the end. Not even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately sought to strike terror into every heart for the purpose of repressing all resistance. Murders and massacres, tortures, shields formed of living human beings, collective penalties, the arrest and execution of hostages, the requisitioning of services for military purposes, the arbitrary destruction of public and private property, the aerial bombardment of open towns without there being any regular siege, the destruction of merchant ships without previous visit and without any precautions for the safety of passengers and crew, the massacre of prisoners, attacks on hospital ships, the poisoning of springs and of wells, outrages and profanations without regard for religion or the honour of individuals, the issue of counterfeit money reported by the Polish Government, the methodical and deliberate destruction of industries with no other object than to promote German economic supremacy after the war, constitute the most striking list of crimes that has ever been drawn up to the eternal shame of those who committed them. The facts are established. They are numerous and so vouched for that they admit of no doubt and cry for justice. The Commission, impressed by their number and gravity, thinks there are good grounds for the constitution of a special Commission, to collect and classify all outstanding information for the purpose of preparing a complete list of the charges under the following heads :—

The following is the list arrived at :—

(1.) Murders and massacres ; systematic terrorism.
(2.) Putting hostages to death.
(3.) Torture of civilians.
(4.) Deliberate starvation of civilians.
(5.) Rape.
(6.) Abduction of girls and women for the purpose of enforced prostitution.

(7.) Deportation of civilians.
(8.) Internment of civilians under inhuman conditions.
(9.) Forced labour of civilians in connection with the military operations of the enemy.
(10.) Usurpation of sovereignty during military occupation.
(11.) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
(12.) Attempts to denationalise the inhabitants of occupied territory.
(13.) Pillage.
(14.) Confiscation of property.
(15.) Exaction of illegitimate or of exorbitant contributions and requisitions.
(16.) Debasement of the currency, and issue of spurious currency.
(17.) Imposition of collective penalties.
(18.) Wanton devastation and destruction of property.
(19.) Deliberate bombardment of undefended places.
(20.) Wanton destruction of religious, charitable, educational, and historic buildings and monuments.
(21.) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers or crew.
(22.) Destruction of fishing boats and of relief ships.
(23.) Deliberate bombardment of hospitals.
(24.) Attack on and destruction of hospital ships.
(25.) Breach of other rules relating to the Red Cross.
(26.) Use of deleterious and asphyxiating gases.
(27.) Use of explosive or expanding bullets, and other inhuman appliances.
(28.) Directions to give no quarter.
(29.) Ill-treatment of wounded and prisoners of war.
(30.) Employment of prisoners of war on unauthorised works.
(31.) Misuse of flags of truce.
(32.) Poisoning of wells.

The Commission desires to draw attention to the fact that the offences enumerated and the particulars given in Annex I are not regarded as complete and exhaustive; to these such additions can from time to time be made as may seem necessary.

CONCLUSIONS

1. The war was carried on by the Central Empires together with their allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity.

2. A Commission should be created for the purpose of collecting and classifying systematically all the information already had or to be obtained, in order to prepare as complete a list of facts as possible concerning the violations of the laws and customs of war committed by the forces of the German Empire and its Allies, on land, on sea and in the air, in the course of the present war.

CHAPTER III

PERSONAL RESPONSIBILITY

The third point submitted by the Conference is thus stated :—

The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs and other individuals, however highly placed.

For the purpose of dealing with this point, it is not necessary to wait for proof attaching guilt to particular individuals. It is quite clear from the information now before the Commission that there are grave charges which must be brought and investigated by a Court against a number of persons.

In these circumstances, the Commission desire to state expressly that in the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the case of Heads of States. An argument has been raised to the contrary based upon the alleged immunity, and in particular the alleged inviolability, of a Sovereign of a State. But this privilege, where it is recognised, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a Sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different.

We have later on in our Report proposed the establishment of a High Tribunal composed of judges drawn from many nations, and included the possibility of the trial before that Tribunal of a former Head of a State with the consent of that State itself secured by articles in the Treaty of Peace. If the immunity of

a Sovereign is claimed to extend beyond the limits above stated, it would involve laying down the prineiple that the greatest outrages against the laws and customs of war and the laws of humanity, if proved against him, could in no circumstances be punished. Such a conclusion would shock the conscience of civilized mankind.

In view of the grave charges which may be preferred against—to take one case—the ex-Kaiser—the vindication of the principles of the laws and customs of war and the laws of humanity which have been violated would be incomplete if he were not brought to trial and if other offenders less highly placed were punished. Moreover, the trial of the offenders might be seriously prejudiced if they attempted and were able to plead the superior orders of a Sovereign against whom no steps had been or were being taken.

There is little doubt that the ex-Kaiser and others in high authority were cognisant of and could at least have mitigated the barbarities committed during the course of the war. A word from them would have brought about a different method in the action of their subordinates on land, at sea and in the air.

We desire to say that civil and military authorities cannot be relieved from responsibility by the mere fact that a higher authority might have been convicted of the same offence. It will be for the Court to decide whether a plea of superior orders is sufficient to acquit the person charged from responsibility.

CONCLUSION

All persons belonging to enemy countries, however high their position may have been, without distinction of rank, including Chiefs of States, who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution.

CHAPTER IV

CONSTITUTION AND PROCEDURE OF AN APPROPRIATE TRIBUNAL

The fourth point submitted to the Commission is stated as follows :—*The Constitution and Procedure of a Tribunal appropriate for the Trial of these Offences* (crimes relating to the war).

On this question the Commission is of opinion that, having regard to the multiplicity of crimes committed by those Powers which

a short time before had on two occasions at the Hague protested their reverence for right and their respect for the principles of humanity,[1] the public conscience insists upon a sanction which will put clearly in the light that it is not permitted cynically to profess a disdain for the most sacred laws and the most formal undertakings.

Two classes of culpable acts present themselves :—

(*a.*) Acts which provoked the world war and accompanied its inception.

(*b.*) Violations of the laws and customs of war and the laws of humanity.

(a.) *Acts which Provoked the War and Accompanied its Inception*

In this class the Commission has considered acts not strictly war crimes, but acts which provoked the war or accompanied its inception, such, to take outstanding examples, as the invasion of Luxemburg and Belgium.

The premeditation of a war of aggression, dissimulated under a peaceful pretence, then suddenly declared under false pretexts, is conduct which the public conscience reproves and which history will condemn, but by reason of the purely optional character of the Institutions at The Hague for the maintenance of peace (International Commission of Enquiry, Mediation and Arbitration) a war of aggression may not be considered as an act directly contrary to positive law, or one which can be successfully brought before a tribunal such as the Commission is authorised to consider under its Terms of Reference.

Further, any enquiry into the authorship of the war must, to be exhaustive, extend over events that have happened during many years in different European countries, and must raise many difficult and complex problems which might be more fitly investigated by historians and statesmen than by a tribunal appropriate to the trial of offenders against the laws and customs of war. The need of prompt action is from this point of view important. Any tribunal appropriate to deal with the other offences to which reference is made might hardly be a good court to discuss and deal decisively

[1] See the declaration of Baron Marschall von Bieberstein, who, speaking at the Hague Conference of 1907 with regard to submarine mines, used the following expressions :—'Military operations are not governed solely by stipulations of international law. There are other factors. Conscience, good sense, and the sense of duty imposed by the principles of humanity will be the surest guides for the conduct of sailors, and will constitute the most effective guarantee against abuses. The officers of the German Navy, I loudly proclaim it, will always fulfil in the strictest fashion the duties which emanate from the unwritten law of humanity and civilisation.'

with such a subject as the authorship of the war. The proceedings and discussions, charges and counter-charges, if adequately and dispassionately examined, might consume much time, and the result might conceivably confuse the simpler issues into which the tribunal will be charged to enquire. While this prolonged investigation was proceeding some witnesses might disappear, the recollection of others would become fainter and less trustworthy, offenders might escape, and the moral effect of tardily imposed punishment would be much less salutary than if punishment were inflicted while the memory of the wrongs done was still fresh and the demand for punishment was insistent.

We therefore do not advise that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal.

There can be no doubt that the invasion of Luxemburg by the Germans was a violation of the Treaty of London of 1867, and also that the invasion of Belgium was a violation of the Treaties of 1839. These Treaties secured neutrality for Luxemburg and Belgium, and in that term were included freedom, independence and security for the population living in those countries. They were contracts made between the High Contracting Parties to them, and involve an obligation which is recognised in international law.

The Treaty of 1839 with regard to Belgium and that of 1867 with regard to Luxemburg were deliberately violated, not by some outside Power, but by one of the very Powers which had undertaken not merely to respect their neutrality, but to compel its observance by any other Power which might attack it. The neglect of its duty by the guarantor adds to the gravity of the failure to fulfil the undertaking given. It was the transformation of a security into a peril, of a defence into an attack, of a protection into an assault. It constitutes, moreover, the absolute denial of the independence of States too weak to interpose a serious resistance, an assault upon the life of a nation which resists, an assault against its very existence while, before the resistance was made, the aggressor, in the guise of tempter, offered material compensations in return for the sacrifice of honour. The violation of international law was thus an aggravation of the attack upon the independence of States which is the fundamental principle of international right.

And thus a high-handed outrage was committed upon international engagements, deliberately, and for a purpose which cannot justify the conduct of those who were responsible.

The Commission is nevertheless of opinion that no criminal charge can be made against the responsible authorities or individuals (and notably the ex-Kaiser) on the special head of these breaches of neutrality, but the gravity of these gross outrages upon the law of nations and international good faith is such that the Commission thinks they should be the subject of a formal condemnation by the Conference.

CONCLUSIONS

1. The acts which brought about the war should not be charged against their authors or made the subject of proceedings before a tribunal.

2. On the special head of the breaches of the neutrality of Luxemburg and Belgium, the gravity of these outrages upon the principles of the law of nations and upon international good faith is such that they should be made the subject of a formal condemnation by the Conference.

3. On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Belgium and Luxemburg, it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.

4. It is desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law.

(b.) *Violations of the Laws and Customs of War and of the Laws of Humanity*

Every belligerent has, according to international law, the power and authority to try the individuals alleged to be guilty of the crimes of which an enumeration has been given in Chapter II. on Violations of the Laws and Customs of War, if such persons have been taken prisoners or have otherwise fallen into its power. Each belligerent has, or has power to set up, pursuant to its own legislation, an appropriate tribunal, military or civil, for the trial of such cases. These courts would be able to try the incriminated persons according to their own procedure, and much complication and consequent delay would be avoided which would arise if all such cases were to be brought before a single tribunal.

There remain, however, a number of charges :—

(*a.*) Against persons belonging to enemy countries who have committed outrages against a number of civilians and soldiers of several Allied nations, such as outrages committed

in prison camps where prisoners of war of several nations were congregated or the crime of forced labour in mines where prisoners of more than one nationality were forced to work ;

(*b.*) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front, but whose orders affected the conduct of operations against several of the Allied armies ;

(*c.*) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the heads of States, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war (it being understood that no such abstention should constitute a defence for the actual perpetrators) ;

(*d.*) Against such other persons belonging to enemy countries as, having regard to the character of the offence or the law of any belligerent country, it may be considered advisable not to proceed before a court other than the High Tribunal hereafter referred to.

For the trial of outrages falling under these four categories the Commission is of opinion that a High Tribunal is essential and should be established according to the following plan :—

(1.) It shall be composed of three persons appointed by each of the following Governments :—The United States of America, the British Empire, France, Italy and Japan, and one person appointed by each of the following Governments : Belgium, Greece, Poland, Portugal, Roumania, Serbia and Czecho-Slovakia. The members shall be selected by each country from among the members of their national courts or tribunals, civil or military, and now in existence or erected as indicated above.

(2.) The tribunal shall have power to appoint experts to assist it in the trial of any particular case or class of cases.

(3.) The law to be applied by the tribunal shall be ' the principles of the law of nations as they result from the usages established among civilised peoples, from the laws of humanity and from the dictates of public conscience.'

(4.) When the accused is found by the tribunal to be guilty, the

tribunal shall have the power to sentence him to such punishment or punishments as may be imposed for such an offence or offences by any court in any country represented on the tribunal or in the country of the convicted person.

(5.) The tribunal shall determine its own procedure. It shall have power to sit in divisions of not less than five members and to request any national court to assume jurisdiction for the purpose of enquiry or for trial and judgment.

(6.) The duty of selecting the cases for trial before the tribunal and of directing and conducting prosecutions before it shall be imposed upon a Prosecuting Commission of five members, of whom one shall be appointed by the Governments of the United States of America, the British Empire, France, Italy and Japan, and for the assistance of which any other Government may delegate a representative.

(7.) Applications by any Allied or Associated Government for the trial before the tribunal of any offender who has not been delivered up or who is at the disposition of some other Allied or Associated Government shall be addressed to the Prosecuting Commission, and a national court shall not proceed with the trial of any person who is selected for trial before the tribunal, but shall permit such person to be dealt with as directed by the Prosecuting Commission.

(8.) No person shall be liable to be tried by a national court for an offence in respect of which charges have been preferred before the tribunal, but no trial or sentence by a court of an enemy country shall bar trial and sentence by the tribunal or by a national court belonging to one of the Allied or Associated States.

CONCLUSIONS

The Commission has consequently the honour to recommend :—

1. **That a High Tribunal be constituted as above set out.**
2. **That it shall be provided by the Treaty of Peace :—**

(*a*.) **That the enemy Governments shall, notwithstanding that Peace may have been declared, recognise the jurisdiction of the National Tribunals and the High Tribunal, that all enemy persons alleged to have been guilty of offences against the laws and customs of war and the laws of humanity shall be excluded from any amnesty to which the belligerents may agree, and that the Governments of such persons shall undertake to surrender them to be tried.**

(*b.*) That the enemy Governments shall undertake to deliver up and give in such manner as may be determined thereby :—

(i.) The names of all persons in command or charge of or in any way exercising authority in or over all civilian internment camps, prisoner-of-war camps, branch camps, working camps and 'commandoes' and other places where prisoners were confined in any of their dominions or in territory at any time occupied by them, with respect to which such information is required, and all orders and instructions or copies of orders or instructions and reports in their possession or under their control relating to the administration and discipline of all such places in respect of which the supply of such documents as aforesaid shall be demanded ;

(ii.) All orders, instructions, copies of orders and instructions, General Staff plans of campaign, proceedings in Naval or Military Courts and Courts of Enquiry, reports and other documents in their possession or under their control which relate to acts or operations, whether in their dominions or in territory at any time occupied by them, which shall be alleged to have been done or carried out in breach of the laws and customs of war and the laws of humanity ;

(iii.) Such information as will indicate the persons who committed or were responsible for such acts or operations ;

(iv.) All logs, charts, reports and other documents relating to operations by submarines ;

(v.) All orders issued to submarines, with details or scope of operations by these vessels ;

(vi.) Such reports and other documents as may be demanded relating to operations alleged to have been conducted by enemy ships and their crews during the war contrary to the laws and customs of war and the laws of humanity.

3. That each Allied and Associated Government adopt such legislation as may be necessary to support the jurisdiction of the International Court, and to assure the carrying out of its sentences.

4. That the five States represented on the Prosecuting Commission shall jointly approach Neutral Governments with a view to obtaining the surrender for trial of persons within their territories who are charged by such States with violations of the laws and customs of war and the laws of humanity.

CHAPTER V

COGNATE MATTERS

Finally, the Commission was asked to consider any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

Under this head the Commission has considered it advisable to draft a set of provisions for insertion in the Preliminaries of Peace, for the assuring in practical form, in accordance with the recommendations at the end of the last chapter, the constitution, the recognition, and the mode of operation of the High Tribunal, and of the national tribunals which will be called to try infractions of the laws and customs of war or the laws of humanity.

The text of these provisions is set out in Annex IV.

March 29, 1919.

UNITED STATES OF AMERICA :—
Subject to the reservations set forth in the annexed Memorandum. (Annex II.)
ROBERT LANSING.
JAMES BROWN SCOTT.

BRITISH EMPIRE :—
ERNEST M. POLLOCK.
W. F. MASSEY.

FRANCE :—
A. TARDIEU.
F. LARNAUDE.

ITALY :—
V. SCIALOJA.
M. D'AMELIO.

JAPAN :—
Subject to the reservations set forth in the annexed Memorandum. (Annex III.)
M. ADATCI.
S. TACHI.

BELGIUM :—
ROLIN-JAEQUEMYNS.

GREECE :—
N. POLITIS.

POLAND :—
L. LUBIENSKI.

ROUMANIA :—
S. ROSENTAL.

SERBIA :—
SLOBODAN YOVANOVITCH.

COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS OF THE WAR AND ON ENFORCEMENT OF PENALTIES

ANNEX I TO THE REPORT OF THE COMMISSION

(Report pp. 17, 18.)

Summary of Examples of Offences committed by the Authorities or Forces of the Central Empires and their Allies against the Laws and Customs of War and the Laws of Humanity.

[*Note.*—As has already been stated in the Report, this tabular analysis does not by any means purport to be exhaustive or complete. The object is simply to give a number of typical examples. The crimes imputable to the Central Empires and their allies run into thousands. The list under each of the heads given below could be very greatly extended.]

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21.	Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew	48
22.	Destruction of fishing boats and of relief ships	50
23.	Deliberate bombardment of hospitals	51
24.	Attack on and destruction of hospital ships	51
25.	Breach of other rules relating to the Red Cross	52
26.	Use of deleterious and asphyxiating gases	53
27.	Use of explosive and expanding bullets, and other inhuman appliances	53
28.	Directions to give no quarter	54
29.	Ill-treatment of prisoners of war	55
30.	Employment of prisoners of war on unauthorised works	57
31.	Misuse of flags of truce	57
32.	Poisoning of wells	57

I.—MURDERS AND MASSACRES: SYSTEMATIC TERRORISM

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
A group of 450 men were shot in front of the church	Aug. 22, 1914	Tamines	German troops	11th Report of Belgian Commission of Enquiry, No. 2.
300 inhabitants were massacred ...	Aug. 20–21, 1914	Andenne and Seilles	.. ..	,, No. 3.
606 persons massacred. (The list of names is in our possession)	Aug. 1914	Dinant	.. ..	Grey Book, pp. 277–289; 2nd Report of Belgian Commission of Enquiry, p. 160.
The following is an extract from a proclamation addressed to the municipal authorities: 'It was with my consent that the Commanding General ordered the whole place [Andenne] to be burnt down and that about 100 persons were shot' In reality more than 400 persons disappeared, of whom more than 200 were shot	Aug. 22, 1914	Liège (Belgium)	A German General	6th Report of Belgian Commission of Enquiry, p. 80.
France				
Use of Civilians as shields to protect Germans against fire of Allied troops.				
At a sugar works the Germans took the manager and his family, as well as all the employees, and made them march parallel to them during the three hours that the engagement lasted, to protect themselves against flanking fire, which resulted in casualties among the exposed persons	Sept. 1, 1914	Néry (Oise)	German troops	1st Report of French Commission of Enquiry, Nos. 376–378.
Neglect of 150 *to* 200 *paralysed and sick old people.*				
40 of them died in three weeks, and all endured terrible sufferings. They received no attention or disinfectants, and were exposed to the cold. They were laid on wooden stretcher-beds in which their excrement accumulated, which, particularly in the case of those who were paralysed, produced sores and gangrene	Between Feb. 20 and 24, 1917	Babœuf (Oise)	.. ..	9th Report of French Commission of Enquiry, Nos. 129–133.
Shooting of Civilians.				
Some inhabitants of Verpillières, who had been arrested on the untenable pretext of having held telephone communication with the French army, were taken to Avricourt, where a War Council was being held. On appearing before the Court, twelve of them were marked with a blue cross on the right cheek. Information as to the subsequent fate of these prisoners is not forthcoming, save in the case of two, who were taken back to Verpillières and shot the same evening	Beginning of Oct. 1914	Verpillières (Somme)	German troops	8th Report of French Commission of Enquiry, Nos. 120, 207, 208.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Greece				
Great number of Greeks massaered by the Turks	July 1914—Dec. 1915	Smyrna. Aivali. Vourla. Adalia. Kirkilissé. Visa. Kessani. Adrianople. Euglezonissi.	Turkish authorities	Greek Memorandum p. 11, Annex vi pp. 34–38 ; vii, pp. 30–32.
Massaeres of Armenians by the Turks systematically organized with German eomplicity More than 200,000 vietims assassinated, burned alive, or drowned in the lake of Van, the Euphrates or the Black Sea	1914–1918	Several Turkish Provinces and particularly the Armenian Vilayets	Turkish Government authorities, military and administrative. Turkish civilians. German authorities. (More than 50 names have been officially authenticated)	Memorandum of the Armenian Patriarchate of Constantinople addressed to the Ambassadors of France and Great Britain. Armenian Memorandum addressed to the Conference. Report of the American Relief Committee in favour of the Armenians and Syrians. The treatment of the Armenians in the Ottoman Empire (presented by Viscount Bryee). Various doeuments in the possession of the British Government. Dr. Martin Niepage's report, professor at the German Realsehule of Aleppo ; and Notes of a German traveller in Turkey during 1915. (Published by the Swiss Committee for the Relief of the Armenians)
Poland				
Several hundred inhabitants shot	1914	Kalisz	German military authorities	Memorandum of Polish Delegation, p. 2.
Tens of thousands of eivilians hanged	1914, 1915 ; espeeially during retreat of Austrian armies	Various plaees	German and Austrian authorities	,, p. 5.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Serbia				
Especially priests, teachers, mayors, influential notables. Many thrown into prison never again seen ; others led out of the town, on pretext of taking them to Bulgaria to be interned, but killed on the way. Others killed in their homes. Women, children, and the aged not spared. These acts done in a systematic manner. Corpses burnt, thrown into rivers, or left to dogs and pigs	Autumn, 1915	Serbia (Vrania); Macedonia (especially districts of Velès, Prilep, and Poretch)	Bulgarians	Rapport de la Commission Interalliée, pp. 7–9.
Massacres *en masse ;* many thousands	Before insurrection of 1917	E. Serbia (departments of Pojarevatz, Vrania, Toplitza)	Bulgarian military authorities, troops, and heads of comitadjis	,, pp. 10–11. (And Annexes au Rapport.)
Seven priests shot	Feb. 24, 1916	Guillanhe	Bulgarian authority	,, p. 51.
Executions *en masse*. In certain places as many as ten gallows set up together	1915–1918	N.W. Serbia (Jagodina, Palanka, Kronchevatz)	Austrian and German military authorities (aided by Albanian fanatics)	Report of Dr. Reiss.* Rapport de la Commission d'enquête serbe, p. 3.

* A Swiss publicist of Lausanne, who presided over a Commission of Enquiry.

2.—PUTTING HOSTAGES TO DEATH

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Greece				
Great number of Greeks murdered by the Bulgarians	Aug., 1916—Aug., 1918	Eastern Macedonia	Bulgarian authorities. (Many names known)	Greek Memorandum, p 4.
Great number of Greek civilians murdered by the Turks	July, 1914—Dec., 1915	District of Mendessa (Asia Minor) Village of Skopo (Thrace)	Turkish officials and civilians	Ditto, Annex vi, pp. 29, 30; vii, pp. 58–60.

3.—TORTURE OF CIVILIANS

Particulars.	*Date.*	*Place.*	*Authors*	*Reference*
Belgium				
By order of the German military authorities the Mayor of the town was compelled to put up the following notice :— 'One-third of the male population will be shot if any citizens fire on soldiers of the German Army'	Aug. 17, 1914	Hasselt ...	German military authorities	6th Report of Belgian Commission of Enquiry, No. 3.
300 inhabitants tied in fours to bridges to prevent the Belgian artillery from destroying them	Aug. 6, 1914	Liège	German troops	17th Report of Belgian Commission of Enquiry, pp. 54, 55.
A German infantry captain put three children round him to protect him from Belgian fire, &c.	Sept. 26, 1914	Klein-Antwerpen	,, ,,	15th Report, pp. 24 25.
France				
Arrest and Cruel Treatment of Civilians, causing the Death of several of them.				
The Abbé Oudin, Curé of the parish of Sompuis (Marne), was arrested owing to his having received a letter containing uncomplimentary remarks about the Germans. The Abbé Oudin (aged 73 and asthmatical) was taken off with his servant, a woman of 67, and other civilians. During the journey and their stay at Vouziers (from the 7th to the 14th), various kinds of cruel treatment were inflicted on them. On the 13th a number of soldiers (mostly officers) spat in the Curé's face, horse-whipped him, threw him into the air and let him fall on the ground, then proceeded to kick him with their boots and spurs. He died on the 15th at Sedan, as a result of this treatment. One of the civilians, who had also received numerous blows which broke several of his ribs, was left to die in the Fabert barracks. The aged servant was thrown down in the mud by soldiers, cruelly beaten and dragged by the hair. In the church four of them threw her on to the altar steps and then among the benches	Sept. 7, 1914	Sompuis (Marne)	German officers and soldiers	5th Report of French Commission of Enquiry. (Nos. 1 to 6.)
Greece				
Great number of Greeks tortured by the Bulgarians	1916—1918	Eastern Macedonia, and many concentration camps in Bulgaria	Bulgarian authorities	Greek Memorandum, p. 4.
Great number of Greeks tortured by the Turks	May to Nov. 1915	Vourla Smyrna	Turkish authorities	,, ,, Annex vii, pp. 56–58.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Poland				
750,000 workmen, reduced to poverty by the deliberate destruction of factories, were induced by German agents to work under conditions depriving them of all their rights. They endured very harsh treatment in regard to work and food, and were frequently beaten	Unspecified	Various places	German authorities	Memorandum of Polish Delegation, p. 4.
Serbia				
Frequent tortures—before murder; tearing out eyes, cutting off nose and ears, also breasts of women. Beaten and hung up. Carried out in prisons and in military quarters	Various dates	Velès and other places. Macedonia	Bulgarians	Rapport de la Commission Interalliée, p. 12.
Bastinado—most frequent of the tortures				,, p. 13.
Men hung up by the feet; heavy weights fastened to feet; flesh torn with pincers; thrown into boiling water		Toplitza, Jitni, Potok, Gregoure, and other villages	,,	,, p. 14.
Woman undressed and nailed to the ground		Donia Beyachnitza	,,	,, p. 15.
Man hung on tree by feet—then set on fire		Totchani ...	,,	,, p. 15.
30 women (wives of priests and schoolmasters) beaten		Koumanovo	,,	,, p. 15.
The President of Society of Ladies of that town beaten. Even pregnant women beaten; torture also applied; stripped and subjected to other outrages		Vrania	,,	,, p. 15.
Families compelled to witness executions of relatives				,, p. 16.
Leading inhabitants forced to do degrading tasks				,, p. 16.
Women in mourning forced to dance the kolo in the very place where massacred Serbs were buried		Sourdoulitza	,,	Rapport de la Commission Interalliée, p. 16.
Lined up women, insulted them, and spat in their faces		Prokouplié ...	Bulgarian authority	,, p. 17.
Civilians compelled to march in front of Austro-Hungarian troops as a shield	1917	N.W. Serbia	Austrian and German military authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, p. 3.

4.—DELIBERATE STARVATION OF CIVILIANS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Greece				
Systematically organized by the Bulgarians. Nearly 40,000 victims among Greek population	1916—1918	Eastern Macedonia	Bulgarian authorities (several names known)	Greek Memorandum, pp. 7, 8.

5.—RAPE

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Women violated	Aug., 1914	Louvain ...	German troops	Grey Book, pp. 300–301, 356–357.
Ditto	Aug. 19, 1914	Corbeek-Loo	,, ,,	2nd Report of Belgian Commission of Enquiry, No. 2, p. 48.
Ditto	Aug. 23, 1914	Nimy	,, ,,	22nd Report of Belgian Commission of Enquiry, p. 135.
Greece				
Many cases of violation of Greek women and girls	1916—1918	Eastern Macedonia	Bulgarian authorities	Greek Memorandum, p. 6.
Great number of Greek victims ...	1915	Aivali. Gioumessi (Asia-Minor)	Turkish officials	,, Annex vi, p.31.
Serbia				
In many villages few women spared. Committed by officers and police, as well as by private soldiers. Several cases in which mothers were victims in presence of their daughters and *vice versa*. Often beaten before violation, and slashed with knives afterwards	1915—1918	(Various) Serbia generally	Bulgarians. Officers, soldiers, and officials	Rapport de la Commission Interalliée, p. 17.
Soldiers suffering from venereal disease ordered to violate girls		Pojarevatz ...	Bulgarian officers	,, p. 19.
A woman given up to officer's dog		,, ...	,, ,,	,, p. 19 (and Annexes au Rapport).
	1914 1915—1918	Serbia, various places	Austrians. Officers, soldiers, and officials	Rapport du Dr. Reiss.

6.—ABDUCTION OF GIRLS AND WOMEN FOR THE PURPOSE OF ENFORCED PROSTITUTION

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Greece				
Great number of Greek women sent to Bulgaria for prostitution	1916—1918	Eastern Macedonia. Sioumen camps in Bulgaria	Bulgarian officers	Greek Memorandum p. 6.
More than 2,000 Greek children, less than 14 years of age, sent to Bulgaria	1916—1918	Eastern Macedonia	Bulgarian authorities	,,
A great number of Greek girls and women carried off and locked up in Turkish harems. A great number of Greek children carried off and distributed among Turkish houses	1914—1918	Several localities on Turkish territory	Turkish authorities	,, Annex viii, p. 23.
A great number of Armenian women, girls and children locked up in harems and converted by force to Mohammedanism	1914—1918	Several Turkish provinces and especially Armenian vilayets	,,	Armenian Memorandum presented to the Conference.

7.—DEPORTATION OF CIVILIANS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
France				
During Easter week some thousands of inhabitants, including many young girls, were suddenly torn from their homes, deported to other regions, and made to undertake forced labour, which is proved by a German Proclamation of April, 1916	April, 1916	Lille (Nord)	German General	6th Report of French Commission of Enquiry, pp. 7, 8.
180 women and girls and 164 men from this place were sent to Germany	Feb. 17, 1917	Nesles (Somme)	German troops	9th Report of the French Commission of Enquiry, No. 235.
Greece				
Nearly 70,000 Greeks deported to Bulgaria, where a great number succumbed to bad treatment, hunger and disease	1916—1918	Eastern Macedonia	German and Bulgarian authorities (many names known)	Greek Memorandum, pp. 8, 9.
More than 400,000 Greeks compelled to abandon their homes and to seek refuge in Greece	1914	Thrace. Western coast of Asia Minor	Turkish authorities (many names known)	Greek Memorandum, p. 11; Annex vi, pp. 39, 299; Annex vii, pp. 50–55.
More than half a million Greeks deported to the interior of Asia Minor, where a great number (more than two-thirds) succumbed to bad treatment, hunger and disease	1915—1918	Many Turkish provinces	Turkish and German authorities (many names known)	Greek Memorandum, pp. 11–14; Annex v, vi, pp. 39, 299; viii, p. 5; xii.
More than a million Armenians deported to Mesopotamia and Syria, where a great number succumbed to bad treatment, hunger, and disease	1914—1918	Several Turkish localities, and especially the Armenian vilayets	Turkish authorities	Armenian Memorandum addressed to the Conference.
Italy				
Deportation of able-bodied men who were forced to leave as soon as they were notified of their destination, even if they were the only support of their family. Two lady nurses were taken from Udine and interned near Gratz	Unspecified ...	Italian front ...	Austrian troops	Catellani's Report, p. 198.
Roumania				
Many cases of deportation of the staffs of communal institutions, in order to interfere with the life of the communes. The transportation was often accompanied by brutal treatment	Unspecified ...	Roumanian front	German authorities	Memorandum of the Roumanian Delegation, ii (*a*).

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Serbia				
Deportation into Bulgaria *en masse*, including children and the aged. Subjected to extreme hardships during transportation ; many died of exhaustion	1914—1918	Serbia (various places)	Bulgarians (ordered by Bulgarian Government)	Rapport de la Commission Interalliée, p. 20 (and Annexes au Rapport).
Massacres, tortures, rape accompanied deportation. Many robbed on the way				
Principal victims : Professors, teachers, priests, judges, lawyers, tradesmen	1914—1918	Sourdoulitza	...	,, pp. 22, 23.
Many shot and bayoneted	1914—1918	,, ...	...	,, p. 23.
3,000 massacred in Sourdoulitza ...	1914—1918	,, ...	Bulgarian soldiers	,, p. 23.
Carried off about 10 per cent. of the population of occupied Serbia	1915—1918	Serbia ...	Austrian and German military authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, pp. 3, 4.

8.—INTERNMENT OF CIVILIANS UNDER INHUMAN CONDITIONS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Greece				
Inhuman treatment of the interned Greeks in Bulgaria. Many thousands of victims	1916—1918	Bulgarian camps : and especially Kitsevo, Karuabat, Kostivar, Tirnovo, Seoumen, Philipopoli	Bulgarian civil and military authorities (many names known)	Greek Memorandum, p. 9 ; Annex iv.
Roumania				
Inhuman treatment of interned Roumanians. Were not given sufficient food	Unspecified	German camps	German authorities	Memorandum of the Roumanian Delegation, ii, p. 1.
Serbia				
Internment *en masse* ; including children and the aged. Dreadful conditions in camps : no clothes, no sanitation, very little food, hard labour, bastinadoed or bayoneted for no offence, or on slightest pretext. Many robbed of their belongings	1914 1915—1918	Sliven, Dioumourtchani, and many other internment camps	Bulgarians (ordered by Bulgarian Government)	Rapport de la Commission Interalliée (and Annexes au Rapport).
Out of 100,000 interned, only 50,000 returned—and they were broken in health		...	...	,, p. 26.
Interned a doctor of Vrania—because the officer had designs on the latter's wife		,,	Bulgarian commandant	,, p. 21.
Internment of priests and teachers		...	Bulgarian authorities	,, p. 51.
Attempted escape of interned civilians punished with death		...	,,	,, p. 51.
Interned subjected to hunger and cold, lacked linen and clothing, reduced by epidemics, many died. Internment utilised as a means of extorting money from Serbian population	1915—1918	Nagymegyer, Sehah, Heinreichgrun, Brannau, Boldogaszony, Neszider, Csegled, Rat, Tranlan	Austrian and German civil and military authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, pp. 3, 4.

9.—FORCED LABOUR OF CIVILIANS IN CONNECTION WITH THE MILITARY OPERATIONS OF THE ENEMY, AND OTHERWISE

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Unsuccessful attempts to make workmen at the Central Arsenal resume work : 3 persons imprisoned ; 190 workmen sent to Germany	April-May 1915	Luttre ...	German authorities	18th Report of Belgian Commission of Enquiry, pp. 76, 77.
Similar incidents in other localities ...	June 1915	Sweveghem ...	,,	,, pp. 78, 79.
	May 1915	Malines ...	,,	,, pp. 77, 78.
France				
That French civilians were subjected to forced labour under severe hardships is clear from the two following documents :—				
1. A proclamation ordering the inhabitants (men, women, and children) to work in the fields every day, including Sundays, from 4 A.M. to 8 P.M., with a total break of 2 hours, making 14 hours' work. ' Idlers ' were to be beaten if they were children, and to undergo 6 months' imprisonment after the harvest if they were women	July 20, 1915	Holnon (Aisne)	German officer	9th Report of French Commission of Enquiry, p. 24.
2. A ' Notice respecting civilian workers ' required workers to salute German officers. Their wages were fixed at 2.25 fr. per day, of which 1.75 fr. was deducted, leaving 50 c. pay, of which only 25 c. was paid in cash	April 28, 1916	Place unspecified	,,	,, p. 23.
Greece				
Greek women compelled by Bulgarians to work in fortification works	1917–1918	Demir-Hissar	Bulgarian authorities	Greek Memorandum, p. 10.
Serbia				
Ordered to carry munitions and provisions to the front, dig trenches, build defensive works, &c.	1915—1918	Various places in Serbia		Rapport de la Commission Interalliée, p. 33.
People taken at a distance ; long spells of labour ; had to find their own food				
Old men, women and children also compelled				

10.—USURPATION OF SOVEREIGNTY DURING MILITARY OCCUPATION

(*See also* No. 12.)

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Poland				
Prevented the populations from organising themselves to maintain order and public security. Aided the Bolshevist hordes that invaded the territories	After conclusion of Armistice	Lithuania, White Russia. Ukraine	German and Austrian authorities	Memorandum of Polish Delegation, p. 5.
Roumania				
Institution of German civil courts to try disputes between subjects of the Central Powers, or between a subject of these Powers and a Roumanian, a neutral, or subjects of Germany's enemies	March 1, 1917	Occupied territory of Roumania	German authorities	Memorandum of the Roumanian Delegation, iv, *a*.
Serbia				
Proclaimed that the Serbian State no longer existed, and that Serbian territory had become Bulgarian	1915–1918	Serbia	Bulgarian authorities. The commander was promoted to rank of General. Official orders show efforts at Bulgarisation	Rapport de la Commission Interalliée, p. 41 (and Annexes au Rapport). ,, pp. 48–51.
Serbian law, courts, and administration ousted	1915–1918	,, ...	,, ...	,, p. 41.
Taxes collected under Bulgarian fiscal régime	,,	,, ...	,, ...	,, p. 41.
Serbian currency suppressed	,,	,, ...	,, ...	,, p. 42.
Public property removed or destroyed, including books, archives and MSS. (*e.g.*, from the National Library, the University Library, Serbian Legation at Sofia, French Consulate at Uskub)	,,	,, ...	,, ...	,, p. 42.
Prohibited sending Serbian Red Cross to occupied Serbia	,,	,, ...	,, ...	,, p. 43.
The Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, judicial organization, &c.	,,	,, ...	Austrian and German authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, pp. 4, 6.
Museums belonging to the State (*e.g.*, Belgrade, Detchani) were emptied and the contents taken to Vienna				

11.—COMPULSORY ENLISTMENT OF SOLDIERS AMONG THE INHABITANTS OF OCCUPIED TERRITORY

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Greece				
Many thousands of Greeks forcibly enlisted by Bulgarians	1917–1918	Eastern Macedonia	Bulgarian authorities	Greek Memorandum, p. 10.
Serbia				
Forced Serbian subjects to fight in the ranks of Bulgarians against their own country	1915–1918	Serbia	Bulgarian authorities	Rapport de la Commission Interalliée, p. 43.
Families and villages were held responsible for refusal to enlist (in Eastern Serbia)				
Serbian subjects were recruited for the Austrian armies, or were sent to the Bulgarians to be incorporated in their forces	1915–1918	Serbia	Austrian and German authorities	Rapport de la Commission d'enquête serbe, p. 6.

12.—ATTEMPTS TO DENATIONALISE THE INHABITANTS OF OCCUPIED TERRITORY

(*See also* No. 10)

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Serbia				
Efforts to impose their national characteristics on the population	1915–1918	Serbia	Bulgarian authorities	Rapport de la Commission Interalliée, p. 36 (and Annexes au Rapport).
Serbian language forbidden in private as well as in official relations. People beaten for saying 'Good morning' in Serbian				
Inhabitants forced to give their names a Bulgarian form		,, ...	,, ,,	,, p. 37.
Serbian books banned—were systematically destroyed		,, ...	,, ,,	,, p. 37.
Archives of churches and law-courts destroyed		,, ...	,, ,,	,, p. 37.
Schools and churches closed, sometimes destroyed		,, ...	,, ,,	,, p. 37.
Bulgarian schools and churches substituted—attendance at school made compulsory		,, ...	,, ,,	,, p. 38.
Population forced to be present at Bulgarian national solemnities		,, ...	,, ,,	,, p. 39.
Austrians and Germans interfered with religious worship, by deportation of priests and requisition of churches for military purposes. Interfered with use of Serbian language		,, ...	Austrian and German authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, p. 5.

13.—PILLAGE

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Town sacked	Aug. 18, 1914	Tongres ...	German troops	17th Report of Belgian Commission of Enquiry, p. 71.
100 houses looted	Aug. 1914	Hougaerde ...	,, ,,	Grey Book, p. 128.
Village sacked	Aug. 6, 1914	Retinne ...	,, ,,	,, ,, p. 133.
Looting lasting several days	Aug. 8, 1914	Francorchamps	,, ,,	17th Report of Belgian Commission of Enquiry, pp. 59–61.
France				
144 lorries with a special detachment arrived and carried off everything of any value These special detachments acted in the same way in numerous districts	Sept. 1, 1914	Lassigny (Oise)	German troops	9th Report of French Commission of Enquiry, No. 103.
At Vraignes and Nesle the Germans seized provisions sent by the Spanish-American relief funds	Date unspecified	Vraignes, Tertry, and Nesle (Somme)	,, ,,	,, Nos. 229, 234, 235.
Greece				
Great number of Greek houses plundered by Bulgarians	1916—1918	Serres ; Cavalla	Bulgarian authorities (several names known)	Greek Memorandum, pp. 4–5.
600 Greek villages plundered by the Turks in Thrace and Asia Minor	1915—1918	Several Turkish provinces	Turkish authorities	Greek Memorandum, p. 13. Annex vi, pp. 32–34.
Italy				
Looting on a large scale, in many cases pointing to systematic organisation by officers	Early in the Austrian campaign	Asiago ...	Austrian troops	Catellani's Report, p. 100.
	Ditto	Gorizia ...	,, ,,	,, p. 160.
	End of 1917	Italian Front	,, ,,	,, p. 200.
	November 1917	Udine ...	Austrian officers and troops	,, pp. 205, 206.
	,, ,,	Conegliano ...	,, ,,	,, p. 207.
	Unspecified	Tolmezzo Sector	,, ,,	,, p. 207
Theft of numerous paintings ...	,,	Castle near Castellavazzo	Austrian officer	,, p. 208.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Roumania				
Regular practice	Unspecified	Bessarabia ...	German troops	Memorandum of the Roumanian Delegation, x.
Serbia				
A constant practice of the military and civil authorities alike, according to an arranged system	1915—1918	Serbia ...	Bulgarians (practised or sanctioned by the authorities)	Rapport de la Commission Interalliée, p. 30 (and Annexes au Rapport).
Frequently followed internments and arrests of Serbs		,, ...	,, ,,	,, p. 31.
Those who were killed were usually despoiled of their goods. Furniture and other effects of houses taken away, and cattle from farms		,, ...	,, ,,	,, p. 31.
Generally done during searches, ordered under the pretext of searching for arms and Serbian books		,, ...	,, ,,	,, p. 30.
On evacuating territory, pillage on a large scale, after ordering the population to evacuate a certain zone		Doiran : Valandovo	,, ,,	,, p. 31.
Blackmail resorted to		Macedonia	Bulgarian authority	,, p. 32.
Blackmailed two peasants (26,000 dinars)		Grabovitza (in department of Toplitza)		,, p. 32.
It was rare to find an Austrian officer who had not taken part in pillage. A special train left each week for Austria and Germany filled with stolen goods.	1915—1918	Serbia (various places)	Austrian and German authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, p. 5.

14.—CONFISCATION OF PROPERTY

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Serbia*				
Private belongings of deported and interned civilians taken from them	1915—1918	Serbia ...	Bulgarians	Rapport de la Commission Interalliée, p. 20.

* Various examples are also given under other heads, *e.g.*, Nos. 10, 13, 18, 29.

15.—EXACTION OF ILLEGITIMATE OR OF EXORBITANT CONTRIBUTIONS AND REQUISITIONS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Besides local levies, the German authorities by successive decrees extorted from Belgium a series of contributions totalling 2,390,000,000 fr., in cash. This sum represents 2,000,000 fr. per day	1914—1918	Belgium (various places)	German authorities	Memorandum drawn up by the Belgian Delegation.
Wavre (Belgium) alone had to contribute 3,000,000 fr., payable by September 1, on a false pretext. The Burgomaster was ordered to hand over 2,000,000 fr. in gold, under the threat: 'The town of Wavre will be set on fire and destroyed unless payment is duly made. No exceptions will be made, and the innocent will suffer with the guilty'	Aug. 22, 1914	Wavre ...	German military authorities	6th Report of Belgian Commission of Enquiry, No. 6.
France				
Eighty-three communes were forced to issue notes to the value of 60,000 fr. per day for the maintenance of Germans; the total issue in the district was 1,600,000 fr.	Date unspecified	Roisel (Somme)	German military authorities	8th Report of French Commission of Enquiry, No. 202.
A levy of 138,450 fr. was imposed, which was obviously beyond the resources of the neighbourhood	Sept. 1916	Guiscard (Oise)	,, ...	,, No. 92.
An order given stated that: 'The circulation of communal notes issued in the district occupied by the First Army is compulsory . . . German soldiers are instructed to pay only with such notes . . . Sums paid to the German Army must be in cash, or German, French, or Belgian notes'	Sept. 1, 1915	Noyon (Oise)	Officer in command	,, No. 79.
At Nesle the electric light installed for German officers was charged by them to the inhabitants	Date unspecified	Nesle (Somme)	German military authorities	,, No. 235
Greece				
Abusive requisition of victuals ...	1916—1917	Eastern Macedonia	Bulgarian authorities	Greek Memorandum p. 5.
Contributions on pretext that they were to be used for philanthropic purposes	1916—1917	,, ...	,, ...	,, p. 5.
Poland				
By means of requisitions,* of so-called 'free purchases,' and of expropriation, an institution known as the 'Kriegsrohstoffstelle' drained the country systematically and completely of all raw materials and manufactured articles. It thus reduced the population to poverty, and increased the death rate very considerably	1915—1918	Various places	German authorities	Memorandum of Polish Delegation, p. 3

* See also under No. 16.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Roumania				
Ruin of Bessarabia (formerly a very rich province) by methodical exploitation ; deprived of cattle, horses, cereals, wood, &c.	Unspecified	Bessarabia ...	German authorities	Memorandum of the Roumanian Delegation, x.
Serbia				
Great economic exploitation ; population reduced to misery	1915—1918	Serbia generally	Bulgarian authorities	Rapport de la Commission Interalliée, p. 27 (and Annexes au Rapport).
New and heavy taxes imposed ; Bulgarian assessment substituted for Serbian				
Contributions levied as fines	1915—1918	Morava ...	,,	,, p. 28.
Contributions levied as 'voluntary gifts'	1915—1918	Macedonia ...	,,	,, p. 28.
In some places no receipts given ; in others, the sums indicated on them were less than those obtained	...	...	...	,, p. 29.
The Austrians seized all the provisions and supplies they could find, not leaving even the minimum indispensable for the native population. They seized every article made of or containing copper.	1915—1918	Serbia generally	Austrian and German authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe, p. 5.

16.—DEBASEMENT OF THE CURRENCY, AND ISSUE OF SPURIOUS CURRENCY

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Poland				
Order issued forbidding any transactions in roubles, on pain of 5 years' imprisonment, a fine of 100,000 marks, and confiscation	April 14, 1917	Poland	German authorities	Memorandum of Polish Delegation, p. 2.
Issue of 862 millions of new coin under the name of 'Polish marks,' current only in that part of Russian Poland ruled by the Governor-General of Warsaw. All requisitions were paid for by this means	April, 1917	,,	,,	,, p. 2.
Issued a new rouble, at a value of 2 marks, whilst the real rate was 2½ marks	1916	Various districts	,,	,, p. 2.
Russian rouble declared equal to 1 mark—a measure that put the population at the mercy of German agents and speculators	March, 1918	Minsk	,,	,,
Serbia				
Depreciated Serbian currency artificially. Serbian population had to exchange all Serbian money for Bulgarian banknotes, and the official rate of exchange was 2 dinars for 1 lev. After a time Serbian banknotes were declared to be valueless	1915–1918	Serbia generally	Bulgarians (ordered by the authorities)	Rapport de la Commission Interalliée, p. 28 (and Annexes au Rapport).
The Austrian authorities decreed that Serbian banknotes were to be accepted, even in private transactions, only at 50 per cent. of their nominal value	1915–1918	,, ,,	Austrian and German authorities	Rapport du Dr. Reiss. Rapport de la Commission d'enquête serbe.

17.—IMPOSITION OF COLLECTIVE PENALTIES

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Families held responsible for the escape of Belgians liable to military service	Jan. 26, 1915	Belgium ...	German military authorities	Grey Book, p. 503.

18.—WANTON DEVASTATION AND DESTRUCTION OF PROPERTY

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
120 houses burnt down; a church deliberately fired	August 1914	Romedenne	German troops	20th Report of Belgian Commission of Enquiry, pp. 97, 105, 106, 107.
Half of the village destroyed	August 1914	Jamoigne	,, ,,	8th Report of Belgian Commission of Enquiry, p. 108.
Every house burnt down, &c.	August 1914	Semel	,, ,,	,,
Most of the town destroyed: 300 houses burnt	Aug. 8, 1914	Herve	,, ,,	3rd Grey Book, p. 123.
France				
France was systematically laid waste for no military reason, especially :— (1.) During the German advance in 1914 (destruction of Gerbeviller, Audun-le-Roman, &c.) (2.) Before the German retreat in March, 1917 During the last-mentioned period, most of the numerous districts evacuated by Germany were deliberately and scientifically reduced to a mass of ruins. We will give only a few examples, viz. :—				
Before the German evacuation, the town of Chauny (population 11,000) was completely looted and then destroyed by fire and dynamite, although no fighting had taken place in the neighbourhood. The destruction began on March 3, 1917, and lasted a fortnight. During that time the inhabitants were quartered in the suburb of Brouage, which was not destroyed; it was, however, bombarded by the Germans on March 20, soon after their departure	March 3—18, 1917	Chauny (Aisne)	,, ,,	8th Report of French Commission of Enquiry, Nos. 161 *et seq.*
The districts of Flavy-le-Martel and Ourscamps are models of destruction	Feb.—March 1917	Flavy-le-Martel (Aisne) Ourscamps (Oise)	,, ,,	,, Nos. 88, 146.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
A strictly secret order from the German authorities reads as follows :— 'The captain of the pioneers will direct the destruction .... The final wholesale destruction in Grevillers, Biefvillers, Aubin, and Avesnes will begin at X + 2 .... Fires will be started about 5 o'clock on the third day of our march .... It is important that all wells should be destroyed ....'	February to March 1917	Grevillers ... Biefvillers Aubin Avesnes Pas de Calais	German troops	9th Report of French Commission of Enquiry, p. 29.
Arson.				
There is documentary proof of the existence of special incendiary equipments brought from Germany (pumps, concentrated cubes, &c.). The districts mentioned here were destroyed in this manner	Sept. 6, 1914	Revigny (Meuse)	German troops	1st Report of French Commission of Enquiry, No. 127.
	Sept. 6, 1914	Sommeilles (Meuse)	,, ,,	,, Nos. 135 *et seq.*
	Aug. 24, 1914	Gerbeviller (Meurthe et Moselle)	,, ,,	,, Nos. 254 *et seq.*
Agricultural Implements carried off or destroyed.				
Such implements were frequently carried off or destroyed, as, for example, in the districts mentioned opposite	Mar. 1917	Voyennes (Somme)	,, ,,	9th Report of French Commission of Enquiry, No. 241.
		Guiscard (Somme)	,, ,,	8th Report of French Commission of Enquiry, No. 92.
		Nesle (Somme)	,, ,,	,, No. 235.
Greece				
Great number of Greek houses devastated and many Greek villages destroyed by Bulgarians	1916—1918	Serres, Drama, Cavalla, and neighbourhood	Bulgarian authorities	Greek Memorandum, pp. 6–7.
Italy				
On the Italian front the Austro-Hungarian Army perpetrated general and systematic acts of devastation and pillage	Various dates	Italian front ...	Austrian troops	Catellani's Report, pp. 99, 100, 101, 122, 123, 124, 160, 200, 205, 206, 207, 208, 209, 210, 211.
Poland				
A town unlawfully bombarded and then set on fire by means of petrol. The most prosperous part was completely looted and then destroyed	1914	Kalisz ...	German military authorities	Memorandum of Polish Delegation, pp. 1, 2.
Roumania				
A province ruined	Unspecified	Bessarabia ...	German military authorities	Memorandum of the Roumanian Delegation, x.
Methodical destruction of buildings, specially those relating to judicial institutions	Unspecified	Various places	German troops	,, v. 1–3.
Destruction of bridges, railways, depôts, works of art	After the conclusion of the Armistice	Various places	,, ,,	,, vi.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Serbia				
Houses and villages entirely rased to the ground, on pretext of military reasons or suppression of insurrection, and sometimes even without any pretext at all	1915—1918	Serbia : Department of Toplitza (village of Alexandrovatz ; Commune of Grgouré). Communes of Bania, Rateha, Dobrodol, Ivankoula, Loukovo Doiran, Valandovo, District of Velès, Monastir	Bulgarian authorities	Rapport de la Commission Interalliée p. 34 (and Annexe au Rapport).
The Austrians, at the time of their first invasion, destroyed numerous villages and set fire to houses	1914	N.W. Serbia	Austrian troops	Rapport du Dr. Reiss

19.—DELIBERATE BOMBARDMENT OF UNDEFENDED PLACES

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Bombs dropped from aeroplanes ...	Sept. 4, 1914	Ghent ...	German areoplane	3rd Report of Belgian Commission of Enquiry, p. 56.
Bombs dropped from aeroplanes ...	Sept. 5, 1914	Eecloo ...	,, ,,	,,
British Empire				
Attack by night. 90 incendiary bombs and some H.E. bombs dropped. 1 woman killed, 1 man injured. No opposition	May 10, 1915	Southend ...	German airman in airship	British Interim Report.
Attack by night. 47 incendiary bombs and 23 H.E. grenades dropped. 2 women killed, 1 child injured. No opposition	May 26, 1915	,, ...	,, (The same airship)	,,
Attack by night, in clear atmosphere and full moon. The parts attacked were occupied by purely civilian inhabitants (Shoreditch, Whitechapel, and the Kingsland Road). There were no military objectives in the vicinity of the parts attacked. 89 incendiary bombs and 30 H.E. grenades dropped. 7 civilians killed, 33 injured. No opposition	May 31, 1915	London ...	,, (The same airship)	,,

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
The objective was the civilian part of he town, and not any military objec-ive. Clear night ; town clearly distin-uishable. Dropped 7 H.E. and 15 in-endiary bombs. 18 civilians killed, 2 injured ; no military casualties	March 5, 1916	Hull	Same airship: German airship (a second airman identified in case of Hull)	British Interim Report.
Attack by night, favourable visibility. Iain attack on the town itself. The irman descended to a height of 2,000 ft.. as he found the town unprotected by uns.' Dropped 18 H.E. and 6 incen-liary bombs. The casualties confined o eivilians : 9 men and 2 children illed, 6 men, 13 women, and 5 ehildren njured. Considerable damage	Apr. 2–3, 1916	Edinburgh (the city)	,,	,,
3 H.E. bombs dropped	Apr. 2–3, 1916	Edinburgh (parishes of Colinton and Liberton)	Another German airman	,,
Battle eruisers and eruisers were ccompanied by destroyers. *Scarborough.*—No fixed defence, and o work of military and naval utility. n the main, the bombardment was a anton and recklessly indiscriminate helling of the town from end to end. 7 civilians killed, 120 injured ; damage o eertain dwellings—£30,000 *Whitby.*—No fixed defence. Damage o eivilian property—£10,000 *West Hartlepool.*—No fixed defence. ndiscriminate bombardment of the own. 56 civilians were killed or sub-equently died of injuries, 222 were more r less seriously injured ; 506 houses nd a number of churches and schools ere damaged	Dec. 16, 1914	Scarborough ; Whitby ; West Hartlepool	German squadrons of the High Sea Fleet (Names of officers available)	British Report, Jan. 16, 1919, p. 4.
Serbia				
Many undefended towns bombarded y big guns	1914—1915	Belgrade, Chabatz, Losnitza	Austrian and German military authorities	Reports of Dr. Reiss. Rapport de la Commission d'enquête serbe, p. 3.
Whole streets destroyed	1916	Bitolje (Monastir)	Bulgarians	Rapport de la Commission Interalliée, p. 34.

20.—WANTON DESTRUCTION OF RELIGIOUS, CHARITABLE, EDUCATIONAL, AND HISTORIC BUILDINGS AND MONUMENTS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
France				
Destruction of Burial Places.				
See the examples here given ...	Date unspecified	Carlepont (Oise)	German troops	8th Report of French Commission of Enquiry, No. 104 and 105.
		Roiglise (Somme)	,,	,, p. 19.
		Manancourt (Somme)	,,	9th Report of French Commission of Enquiry, No. 252.
General and systematic pillage and devastation	Date unspecified	Italian Front	Austro-Hungarian armies	Castellani Report, pp. 99–101, 122–124, 160, 200, 205–211.
Serbia				
Schools, monasteries and churches destroyed	1915—18	Serbia ...	Bulgarians. (The authorities themselves)	Rapport de la Commission Interalliée, p. 37.
Historic monuments destroyed ...	1915—18	Macedonia ...	,,	,, p. 38.
Ancient inscriptions, portraits of sovereigns and saints obliterated	1915—18	,, ...	,,	,, p. 38.
Public gardens, fountains, tombstones demolished	1915—18	,, ...	,,	,, p. 38.
Cemeteries of Serbian soldiers devastated	1915—18	,, ...	,,	,, p. 38.

21.—DESTRUCTION OF MERCHANT SHIPS AND PASSENGER VESSELS WITHOUT WARNING AND WITHOUT PROVISION FOR THE SAFETY OF PASSENGERS AND CREW

Particulars.	*Date.*	*Vessel attacked and place.*	*Author.*	*Reference.*
British Empire				
After the boats were lowered the submarine continued to fire, killing or wounding several of the crew, and killing a lady passenger. The submarine offered no assistance, and went away after sinking the ship	Mar. 27, 1915	British s.s. 'Aguila.' 51.05 N., 06.11 W.	German submarine	British Report.
The steamer carried a crew of 95 and 147 passengers : only 20 minutes elapsed between the submarine's warning and the sinking of the ship, so that it was impossible to transfer this number of people to the boats. 104 lives were lost	Mar. 28, 1915	British s.s. 'Falaba.' 51.32 N., 06.40 W.	,,	,,
Submarine opened fire while the crew were lowering the boats. 2 men missing	Aug. 17, 1915	British s.s. 'Glenby.' 52.09 N., 05.44 W.	,,	,,

Particulars.	*Date.*	*Vessel attacked and place.*	*Authors.*	*Reference.*
Torpedoed without warning. Only 5 oats got away, 213 of the crew and 121 assengers losing their lives through the xplosion or by drowning	Dec. 30, 1915	British s.s. 'Persia.' 34.01N., 26.00E.	German submarine	British Report.
Torpedoed without warning. A num- er of boats, with master and 51 mem- ers of the crew, were lost	Dec. 30, 1915	British s.s. 'Clan Macfarlane.' 34.05N , 25.35E.	,,	,,
Lost, without trace ; but her name ppeared on a German list (March 6, 917) of English steamers sunk	Oct. 1916	British s.s. 'Clearfield.' W. of Scotland.	,, *	,,
Torpedoed without warning. Master nd 34 of the crew lost	Jan. 27, 1917	British s.s. 'Artist.' 51.20 N., 07.00 W.	,,	,,
Attacked without warning. Master nd cook washed overboard, could easily ave been rescued, but the Germans ook no notice of them	Jan. 30, 1917	British smack 'Trevone.' 30.00N.W byN. ofTrevoseHead.	,,	,,
Torpedoed without warning whilst oing to assist the life-boats of another hip that had been sunk, and 5 minutes fter the submarine opened fire with rapnel, and kept on firing whilst the rew were trying to save themselves. nly one survivor of 33	April 8, 1917	British s.s. 'Torrington.' 49.00 N., 10.00 W.	,,	,,
Carrying 749 passengers, many of hom were women and children. Tor- edoed without warning by an unseen nbmarine. 143 lives lost	Sept. 17, 1918	British s.s. 'Galway Castle.' 48.50N.,10.40W.	,,	,,
France				
2,200 refugees on board : was torpe- oed without warning three miles from ape Gris-Nez. There were 20 victims	Oct. 26, 1914	s.s. 'Amiral Ganteaume.' The Channel	German submarine	7th Report of French Commission of Enquiry, Nos. 37–40.
Torpedoed without warning. Only ne clever handling by her captain kept er afloat. There were about 100 vic- ms, including many women and ildren	Mar. 24, 1916	s.s. 'Sussex.' The Channel	,,	,, Nos. 2–36.
Torpedoed without warning, sinking out a minute later. Submarine came surface three minutes after the vessel nk, but no attempt to help any of the ew who were clinging to wreckage. 4 lost out of 35 persons	Nov. 28, 1917	s.s. 'Jeanno Conseil.' 47.20 N., 3.55 W.	,,	British Report.
Torpedoed and sunk without warning y unseen submarine, which afterwards me to surface and rammed the boats ntaining the crew. The assailants ughed at the men in the water. 35 ves lost out of 44	July 10, 1918	s.s. 'Lyndiane.' Off north coast of Spain	,,	,,

* See also under Nos. 22 and 24.

Particulars.	*Date.*	*Vessel attacked and place.*	*Authors.*	*Reference.*
Italy				
An emigrant steamer torpedoed without warning. About 300 lives lost out of about 450 passengers and crew. Survivors who approached submarine pushed back into the water with jeers	Nov. 7, 1915	The 'Ancona.' Between Sardinia and Tunisia	German submarine	Catellani's Repo p. 32: British R port.
The 'Letimbro' attacked without warning by an Austrian submarine, which continued to fire after the vessel had hoisted the white flag and lowered her boats	July 30, 1916	The 'Letimbro.' Between Benghasi and Syracuse	Austrian submarine	Catellani's Repo p. 33.
Japan				
Torpedoed without warning, and sank in 49 minutes. Many wounded	Dec. 21, 1915	The 'Yasaka-Maru' off Paros	Enemy submarine	Report of Japane Delegation.
Without any warning was struck by two torpedoes, and sank in seven minutes. Of the 241 persons on board (crew and passengers) 211 perished, including three women and six children	Oct. 1, 1918	The 'Nirano-Maru.' 51.12 N., 7 W.	,,	,,

22.—DESTRUCTION OF FISHING BOATS AND OF RELIEF SHIPS

Particulars.	*Date.*	*Vessel attacked and place.*	*Authors.*	*Reference.*
Belgium				
A Belgian Relief Steamer carrying a cargo of grain from Buenos Ayres to Rotterdam for the Belgian Relief Commission. She bore the Neutral Commission's flags and markings. The German authorities in the United States had stated that they did not mean to interfere with relief ships. But the vessel was torpedoed without warning, her crew of 18 being all drowned, except the chief engineer	Feb. 4, 1917	Danish s.s. 'Lars Krusc.' 20° N. of Ushant	German submarine*	British Report.
France				
When 160 miles off the coast of Ireland, the crew of the 'Bernadette,' a fishing-vessel, were ordered by a submarine to take to the boats. The skipper was refused time to take the necessary provisions. The boats were left on the open sea, and of the 34 men comprising the crew only 24 were rescued by various vessels, after having been five or six days exposed to very great dangers, to hunger and to thirst	May 1, 1916	French fishing-boat, 'Bernadette.' The Atlantic Ocean	German submarine	7th Report of Frenc Commission of En quiry, Nos. 46–51.

* See also under Nos. 21 and 24.

23.—DELIBERATE BOMBARDMENT OF HOSPITALS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
British Empire				
The hospital area of Étaples was aeked by 12 maehines for an hour; 0 bombs dropped. Magnesium lights re dropped over the hospital, followed bombs. The erosses would be visible m the height of the assailants (000 ft.) *Casualties.*—In the hospital area, 27 lled (ineluding 1 sister), 79 wounded eluding 4 sisters)	May 31—June 1, 1918	Étaples (Franee)	German airmen	British Report.
Italy				
Numerous instanees of firing on pro-ly marked hospitals, motor ambu-ees, &e.	At various times	Italian front	Austro-Hungarian troops	Catellani's Report, pp. 52–54.
Serbia				
spital bombarded	Feb. 27, 1917	Vertekop ...	Bulgarian airmen	Rapport de la Commission Interalliée, p. 6.

24.—ATTACK ON AND DESTRUCTION OF HOSPITAL SHIPS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
British Empire				
Vas earrying all the proper marks and ts, but was torpedoed without warn- 234 lives lost out of 258 persons ried	June 27, 1918	'Llandovery Castle.' 50.36 N., 12.27 W.	German submarine	British Report.
While burning her lights brightly, torpedoed and sunk without warn- 14 boats were lowered and all ds saved, exeept four men who were obably killed by the explosion	Jan. 4, 1918	'Rewa.' 50.59 N., 04.10 W.	German submarine*	,,
orpedoed and sunk without warning. ying no patients, but full medieal t. Showing all proper markings and ts. 153 lives lost out of 182	Feb. 26, 1918	'Glenart Castle.' Off Lundy Island	German submarine	,,
lowing all proper markings and s; had 438 wounded on board. Hit out warning by a torpedo, which not explode	Mar. 10, 1918.	'Guildford Castle.' Bristol Channel	German submarine	,,
France				
le 'Portugal,' lent by Franee to ia, and bearing the regulation ts, was sunk without warning in d daylight	Mar. 17, 1916	'Portugal.' Black Sea	Submarine	7th Report of Freneh Commission of Enquiry, Nos. 56–60.

* See also under Nos. 21 and 22.

25.—BREACH OF OTHER RULES RELATING TO THE RED CROSS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Shots fired from a German car by four men wearing Red Cross badges	Aug. 19, 1914	Beauvechain	German troops	15th Report of] gian Commission Enquiry, p. 28.
France				
Stretcher-bearers Carrying Wounded Treacherously Fired on. In 1914, stretcher-bearers of the 267th Regiment were sent on to the battlefield during a lull to bring in the dead and wounded. The Germans at first allowed them to do so, but when six stretchers had gone out they opened fire	1914	La Neuville (Marne)	,, ,,	3rd Report of Fre Commission of quiry, Nos. 245–2
Wanton Massacre of Medical Personnel and Wounded On August 22, 1914, after the battle of Ethe (Belgium), a dressing station having been set up, a German lieutenant examined it and declared that everything was in order. Later, however, an enemy N.C.O., accompanied by several men, ordered doctors, orderlies, and wounded in one of the rooms to go out and be shot. When it was explained that they were all wounded men or medical staff, the N.C.O. ordered his men to open fire and blew out the brains of a wounded lieutenant, while his men killed or wounded doctors. Later, 60 or 80 wounded men in a burning barn (which formed part of the dressing station) were fired at, as they tried to escape, by sentinels stationed at both doors of the barn, and those who did manage to get out were overtaken by the Germans and shot at the foot of the cemetery wall The Report speaks of an 'immense number' of such cases	Aug. 22, 1914	Ethe (Belgium)	,, ,,	,, Nos. 73, 236.
Italy				
An Austrian officer threw a wounded Italian down a precipice	April 1, 1916	Monte Colombara	Austrian officer	Catellani's Repor p. 52.
Extract from Army Order :— 'Enemy cars belonging to the Medical Corps have hitherto been allowed to work within range of our guns. In future warning shots will be fired by our artillery or machine guns, and if no notice is taken, they will be fired on'	Oct. 5, 1915	Italian front	Austrian military authorities	Catellani's Report p. 54.

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Serbia				
Especially at time of Austrian first ensive ; Serbian wounded massacred the most savage manner, with onets, knives, butt of rifles ; wound- mutilated ; some impaled	1914	Jovanovatz and other places	Austrian troops	First Report of Dr. Reiss. Rapport de la Commission d'enquête serbe, p. 3.
Similar conduct. Massacred also ole groups of wounded, by fastening m together. 114 wounded thus ated	1915	Chtip and other places	Bulgarian troops	Rapport de la Commission Interalliée, p. 4 (and Annexes au Rapport).

26.—USE OF DELETERIOUS AND ASPHYXIATING GASES

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
France				
Asphyxiating Gas.				
The Germans first used this on the gian front on April 22, 1915 Their soldiers were provided with pirators, whereas the Allies were en completely by surprise	April 22, 1915	Near Ypres	German troops	4th Report of French Commission of Enquiry, Nos. 330 *et seq.*

27.—USE OF EXPLOSIVE AND EXPANDING BULLETS, AND OTHER INHUMAN APPLIANCES

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Explosive bullets	Aug. 25, 1914	Werchter ...	German troops	7th Report of Belgian Commission of Enquiry.
Expanding bullets	Sept. 10, 1914	Lubbeek ...	,, ,,	,, ,,
	Sept. 26, 1914	Ninove ...	,, ,,	,, ,,
	Sept. 27, 1914	Alost	,, ,,	,, ,,
France				
Expanding Bullets.				
Reversed, truncated and explosive llets were frequently used by the rmans. The following have, for in- nce, been found :—				
Reversed bullets, in the possession of German of the 7th Infantry Regiment	Dec. 26, 1914	Bixshoote (Belgium)	German troops	3rd Report of French Commission of Enquiry, Nos. 18 *et seq.*
Truncated bullets	Dec. 7, 1914	Vermelles (Pas-de-Calais)		
Explosive bullets in the possession of German of the 1st Yäger Battalion	Oct., 1914	Neuf-Berquin (Nord)		

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
An order issued by German General Headquarters on September 24th, 1914, instructed all German soldiers, in the event of being taken prisoner, to get rid of any bullets of this kind, such, for instance, as the German 'Parabellum' revolver ammunition, so that they might not be shot by the French	Sept. 24, 1914	...	German General Head-quarters	3rd Report of French Commission of Enquiry, No. 32.
Delay-action Mines, &c.				
Before effecting their retreat in March, 1917, the Germans concealed a large number of delay-action mines, as at Bapaume, where the explosion of one of these mines killed two French deputies at the Hôtel de Ville on March 25	March, 1917	Bapaume (Pas-de-Calais)	German troops	9th Report of French Commission of Enquiry, No. 258.
At Cuts	...	Cuts (Oise)	,, ,,	,, No. 153.
At Blérancourt, &c., &c.	...	Blérancourt (Aisne)	,, ,,	,, Nos. 185–19
Italy				
Expanding bullets	May 8, 1916	Italian front	Austrian troops	Catellani's Report p. 16.
Explosive bullets	On various occasions, especially	Italian front, especially the plateau of Asiago		
	Sept. 1916,	...	,, ...	,, p. 16.
	Feb. 24, 1917,	...	Austrian aeroplane	,, p. 17.
	March 5, 1917,	...	Austrian troops	,, p. 17.
Iron clubs to finish off wounded soldiers or those rendered unconscious by poison gas	From 1916 onwards	Isonzo, Podgora, Sabotino, San-Michele	Austrian troops	,, pp. 19–21
Roumania				
Airships scattered fruit, chocolate, sweets, children's toys and other articles that were infected with fatal germs	Unspecified	Various towns, especially Bucharest	Enemy airmen	Memorandum of the Roumanian Delegation, ii. *a*.

28.—DIRECTIONS TO GIVE NO QUARTER

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
France				
German officers were instructed to give the following order to their troops:— 'From to-day onwards no more prisoners will be taken. All the prisoners, wounded or otherwise, are to be killed'	Aug. 1914.	Thiaville (Meurthe et Moselle)	German General	3rd Report of French Commission of Enquiry, Nos. 53–72.
Italy				
An order to 'take as few prisoners as possible,' given by an Austrian general on the Italian front. The first act committed in execution of this order was the massacre of 700 Italian prisoners	Date not given	Italian front	Austrian General	Catellani's Report, p. 73.

29.—ILL-TREATMENT OF PRISONERS OF WAR AND WOUNDED

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Belgium				
Prisoners were drawn up in files along ıe Meuse to protect the Germans, who arched behind them ; 129 were killed)t far from the prison	Aug. 23, 1914	Dinant	German troops	20th Report of Belgian Commission of Enquiry, pp. 92, 93.
Wounded prisoners killed by the Germans	Aug. 26, 1914	Hofstade ...	,, ,,	21st Report of Belgian Commission of Enquiry, p. 131.
26 prisoners shot	Aug. 18, 1914	Aerschote ...	,, ,,	5th Report of Belgian Commission of Enquiry, p. 65.
British Empire				
Imprisonment of British soldiers under)nditions of gross inhumanity. Confined in grossly overcrowded cells (sometimes underground), without sanitary ccommodation of any kind, except a ıb in the cell, which overflowed on to ıe floor where the men slept. Badly entilated. Vermin abounded. Had ıarvation rations, and water was reıised. In the summer-time the heat ras so great that the men had to strip aked. Were ill-treated and became iseased and enfeebled. Dysentery and)res were rife. The treatment was eliberate	Jan. 1917—July 1918	Fort Macdonald (Monsen-Barœul) near Lille, and Lille	German authorities (names available)	British Report.
Five hundred British prisoners of war ent to a camp on the Russian Front, vhere they were detained under condiions that involved many deaths and errible suffering. Terrible circumtances, in which they made a midvinter march to Latchen, up the frozen River Aa from Libau. Fearful condiions of exposure from Arctic cold and he fire of the enemy. At Latchen, subected to brutality and want, resulting n much loss of life and permanent disblement. At the end of April only 77 nen were left in the camp, of whom 47 were unfit	Feb. 1, 1917—Apr. 30, 1917	German Eastern Front (Russian occupied territory), Latchen, near Kalzman	,,	,, ,,
The Turkish authority who ordered he march of British prisoners of war was cognisant of the sufferings it inrolved, and was informed of the great sufferings that were being endured. Deaths resulted. Inhuman treatment in he working camps. Inhuman reprisals)n British officers at Constantinople. Inhuman treatment of British officers ınd others at Constantinople. Inhumanity to British officers at Changri in)rder to compel them to give their parole		Turkey in Asia. (1.) March of British prisoners of war from Kut-el-Amara to Ras-al-Ain by way of Baghdad and Mosul (2.) Prisoner-of-war working camps in Asia Minor on the Anatolian Railway (3.) Civas (4.) Constantinople	Turkish authorities (names available)	,, ,,

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference*
Inhuman treatment of British and Indian prisoners of war		Turkey in Asia. Prisoner-of-war working camps on the Anatolian Railway	Turkish authorities (names available)	British Report
France				
Use of prisoners as shields. When advancing towards our lines, the Germans placed about 40 disarmed prisoners (Marine Rifles) in front of them, so as to prevent the French troops from firing	Nov. 10, 1914	West of Dixmude (Belgium)	German troops	3rd Report of French Commission of Enquiry, Nos. 9–14.
Execution of about 30 prisoners of war. On being surrounded by the Germans, about 30 men of the 99th Infantry Regiment surrendered to an enemy lieutenant, who made them lay down their arms, step out and line up against a wall. Despite their entreaties, they were shot by a firing squad	Aug. 29, 1914	Tiges Farm, near St. Dié	German lieutenant	3rd Report of French Commission of Enquiry, Nos. 116–121.
Poland				
Inhuman treatment of interned prisoners. Deprived of their belongings under threat of being shot. Hard labour ; frequently beaten ; forced to run the gauntlet ; constant insults	From Aug. 1914	Various places, notably at camp of Hannover-Linden	German authorities (names known)	Report of Government Commission.
Roumania				
Refused to allow neutral official visits to prisoners' camps	Unspecified	Bulgarian prisoners' camps	Bulgarian Government	Memorandum of the Roumanian Delegation, ii, p. 2.
250 Roumanian officers completely deprived of their belongings and horribly tortured	Oct. 18–19, 1916	Rakowski station	Bulgarian troops	,, ,,
Roumanian officers deprived for five days of food and water for refusing to take part in the construction of earthworks	Unspecified	Oustovo, Vlaikovo, Raikovo	Bulgarian authorities	,, ,,
Serbia				
Massacre, torture, mutilation, including wounded prisoners ; robbed first	1915	Chtip	Bulgarians	Rapport de la Commission Interalliée, p. 4 (and Annexes au Rapport).
150 to 200 prisoners massacred on way to military hospital ; knives and bayonets used ; robbed first	1915	Lioubotène ...	,,	,, p. 5.
Wounded prisoners mutilated and put to death	1916	Kaimaktchalan	,,	,, p. 5.
Prisoners robbed in internment camps, &c. ; employed in the front lines	1916	,,	,,	,, p. 5.
Officers also forced to do hard labour	1916	,,	Bulgarian authorities	,, p. 5.
Attempted escape punished with death	1916	,,	,,	,, p. 51.
Prisoners forced to march for six days without food ; several fell dead on the way from exhaustion. Barbarous punishments inflicted on them	1915	Mitrovitza-Kralievo	Austrian and German military authorities	Reports of Dr. Reiss.
Compelled to do work directly connected with military operations, *e.g.*, to dig trenches, to carry munitions under enemy fire	1915	,,	,,	Rapport de la Commission d'enquête serbe, p. 2.

30.—EMPLOYMENT OF PRISONERS OF WAR ON UNAUTHORISED WORKS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
France				
Immediate employment of French soldiers, who had just been made prisoner and disarmed, to construct trenches under fire	Sept. 25, 1914	Champagne front	German authorities	3rd Report of French Commission of Enquiry, No. 8.
	Nov. 10, 1914	Dixmude	,,	Ditto, No. 14.
Italy				
Employment of prisoners on military works on the French front	1917—1918	French front, Camp Dulman	,,	Mortara's Report on Prisoners, pp. 14–17.
Employment of prisoners on the Russian front, even under fire, in munition works	1917—1918	Russian front, Rusten Works	,,	Ditto, pp. 22–24.

31.—MISUSE OF FLAGS OF TRUCE

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
Italy				
After the white flag had been hoisted on an Austrian redoubt, a rapid and heavy fire from machine-guns was opened on an Italian alpine detachment which was advancing towards the redoubt	June 15, 1915	Italian front	Austrian troops	Catellani's Report, p. 30.
The same stratagem was made use of at another point, in order to lure the Italians on to a mined area	June 16, 1915	,,	,,	,, p. 30.

32.—POISONING OF WELLS

Particulars.	*Date.*	*Place.*	*Authors.*	*Reference.*
France				
Wells were frequently polluted by deliberately throwing corpses or manure into them	Feb. 23, 1917	Bernes (Somme)	German troops	9th Report of French Commission of Enquiry, Nos. 191, 227, 238, 244, &c.
	March 1917	Rouy-le-Petit (Somme)	,, ,,	
	March 1917	Nesle (Somme)	,, ,,	

ANNEX II

Memorandum of Reservations presented by the Representatives of the United States to the Report of the Commission on Responsibilities, April 4, 1919.

The American members of the Commission on Responsibilities, in presenting their reservations to the report of the Commission, declare that they are as earnestly desirous as the other members of the Commission that those persons responsible for causing the Great War and those responsible for violations of the laws and customs of war should be punished for their crimes, moral and legal. The differences which have arisen between them and their colleagues lie in the means of accomplishing this common desire. The American members therefore submit to the Conference on the Preliminaries of Peace a memorandum of the reasons for their dissent from the report of the Commission and from certain provisions for insertion in Treaties with enemy countries, as stated in Annex IV, and suggestions as to the course of action which they consider should be adopted in dealing with the subjects upon which the Commission on Responsibilities was directed to report.

Preliminary to a consideration of the points at issue and the irreconcilable differences which have developed and which make this dissenting report necessary, we desire to express our high appreciation of the conciliatory and considerate spirit manifested by our colleagues throughout the many and protracted sessions of the Commission. From the first of these, held on February 3, 1919, there was an earnest purpose shown to compose the differences which existed, to find a formula acceptable to all, and to render, if possible, a unanimous report. That this purpose failed was not because of want of effort on the part of any member of the Commission. It failed because, after all the proposed means of adjustment had been tested with frank and open minds, no practicable way could be found to harmonise the differences without an abandonment of principles which were fundamental. This the representatives of the United States could not do and they could not expect it of others.

In the early meetings of the Commission and the three Sub-Commissions appointed to consider various phases of the subject submitted to the Commission, the American members declared that there were two classes of responsibilities, those of a legal

nature and those of a moral nature, that legal offences were justiciable and liable to trial and punishment by appropriate tribunals, but that moral offences, however iniquitous and infamous and however terrible in their results, were beyond the reach of judicial procedure, and subject only to moral sanctions.

While this principle seems to have been adopted by the Commission in the report so far as the responsibility for the authorship of the war is concerned, the Commission appeared unwilling to apply it in the case of indirect responsibility for violations of the laws and customs of war committed after the outbreak of the war and during its course. It is respectfully submitted that this inconsisteney was due in large measure to a determination to punish certain persons, high in authority, particularly the heads of enemy States, even though heads of States were not hitherto legally responsible for the atrocious acts committed by subordinate authorities. To such an inconsistency the Amerıcan members of the Commission were unwilling to assent, and from the time it developed that this was the unchangeable determination of certain members of the Commission they doubted the possibility of a unanimous report. Nevertheless, they continued their efforts on behalf of the adoption of a consistent basis of principle, appreciating the desirability of unanimity if it could be attained. That their efforts were futile they deeply regret.

With the manifest purpose of trying and punishing those persons to whom reference has been made, it was proposed to create a high tribunal with an international character, and to bring before it those who had been marked as responsible, not only for directly ordering illegal acts of war, but for having abstained from preventing such illegal acts.

Appreciating the importance of a judicial proceeding of this nature, as well as its novelty, the American Representatives laid before the Commission a memorandum upon the constitution and procedure of a tribunal of an international character which, in their opinion, should be formed by the union of existing national military tribunals or commissions of admitted competence in the premises. And in view of the fact that ' customs ' as well as ' laws ' were to be considered, they filed another memorandum, attached hereto, as to the principles which should, in their opinion, guide the Commission in considering and reporting on this subject.

The practice proposed in the memorandum as to the military commissions was in part accepted, but the purpose of constituting a high tribunal for the trial of persons exercising sovereign rights

was persisted in, and the abstention from preventing violations of the laws and customs of war and of humanity was insisted upon. It was frankly stated that the purpose was to bring before this tribunal the ex-Kaiser of Germany, and that the jurisdiction of the tribunals must be broad enough to include him even if he had not directly ordered the violations.

To the unprecedented proposal of creating an international criminal tribunal and to the doctrine of negative criminality the American members refused to give their assent.

On January 25, 1919, the Conference on the Preliminaries of Peace in plenary session recommended the appointment of a Commission to examine and to report to the Conference upon the following five points :—

1. The responsibility of the authors of the war.
2. The facts as to the violations of the laws and customs of war committed by the forces of the German Empire and its allies, on land, on sea, and in the air during the present war.
3. The degree of responsibility for these crimes attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.
4. The constitution and procedure of a tribunal appropriate for the trial of these offences.
5. Any other matters cognate or ancillary to the above points which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

I

The conclusions reached by the Commission as to the responsibility of the authors of the war, with which the Representatives of the United States agree, are thus stated :—

The war was premeditated by the Central Powers, together with their Allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable.

Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the *Entente* Powers and their repeated efforts to avoid war.

The American Representatives are happy to declare that they not only concur in these conclusions, but also in the process of reasoning by which they are reached and justified. However, in addition to the evidence adduced by the Commission, based for the most part upon official memoranda issued by the various Governments in justification of their respective attitudes towards the Serbian question and the war which resulted because of the deliberate determination of Austria-Hungary and Germany to crush that gallant little country which blocked the way to the Dardanelles and to the realisation of their larger ambitions, the American Representatives call attention to four documents, three of which have been made known by His Excellency Milenko R. Vesnitch, Serbian Minister at Paris. Of the three, the first is reproduced for the first time, and two of the others were only published during the sessions of the Commission.

The first of these documents is a report of Von Wiesner, the Austro-Hungarian agent sent to Serajevo to investigate the assassination at that place on June 28, 1914, of the Archduke Francis Ferdinand, heir to the Austro-Hungarian Throne, and the Duchess of Hohenberg, his morganatic wife.

The material portion of this report, in the form of a telegram, is as follows :—

'*Herr von Wiesner, to the Foreign Ministry, Vienna.*

Serajevo, July 13, 1914, 1.10 p.m.

'Cognizance on the part of the Serbian Governm nt, participation in the murderous assault, or in its preparation, and supplying the weapons, proved by nothing, nor even to be suspected. On the contrary there are indications which cause this to be rejected.' *

The second is likewise a telegram, dated Berlin, July 25, 1914, from Count Szoegeny, Austro-Hungarian Ambassador at Berlin, to the Minister of Foreign Affairs at Vienna, and reads as follows :—

'Here it is generally taken for granted that in case of a possible refusal on the part of Serbia, our immediate declaration of war will be coincident with military operations.

* *Herr v. Wiesner an Ministerium des Aeussern in Wien.*

Sarajevo, 13. *Juli* 1914, 1.10 p.m.

Mitwissenschaft serbischer Regierung, Leitung an Attentat oder dessen Vorbereitung und Beistellung der Waffen, durch nichts erwiesen oder auch nur zu vermuten. Es bestehen vielmehr Anhaltspunkte, dies als ausgeschlossen anzusehen.

Delay in beginning military operations is here considered as a great danger because of the intervention of other Powers.

We are urgently advised to proceed at once and to confront the world with a *fait accompli*.' *

The third, likewise a telegram in cipher, marked 'strictly confidential,' and dated Berlin, July 27, 1914, two days after the Serbian reply to the Austro-Hungarian ultimatum and the day before the Austro-Hungarian declaration of war upon that devoted kingdom, was from the Austro-Hungarian Ambassador at Berlin to the Minister of Foreign Affairs at Vienna. The material portion of this document is as follows :—

'The Secretary of State informed me very definitely and in the strictest confidence that in the near future possible proposals for mediation on the part of England would be brought to Your Excellency's knowledge by the German Government.

'The German Government gives its most binding assurance that *it does not in any way associate itself with the proposals* ; on the contrary, it is absolutely opposed to their consideration and only transmits them in compliance with the English request.' †

Of the English propositions, to which reference is made in the above telegram, the following may be quoted, which, under date July 30, 1914, Sir Edward Grey, Secretary of State for Foreign Affairs, telegraphed to Sir Edward Goschen, British Ambassador at Berlin :—

'If the peace of Europe can be preserved, and the present crisis safely passed, my own endeavour will be to promote some arrangement to which Germany could be a party, by which she could be assured that no aggressive or hostile policy would be

* *Graf Szoegeny an Minister des Aeussern in Wien.*

(285.) *Berlin*, 25. *Juli* 1914.

Hier wird allgemein vorausgesetzt, dass auf eventuelle abweisende Antwort Serbiens sofort unsere Kriegserklärung verbunden mit kriegischen Operationen erfolgen werde.

Man sieht hier in jeder Verzögerung des Beginnes der kriegerischen Operationen grosse Gefahr betreffs Einmischung anderer Mächte.

Man rät uns dringendst sofort vorzugehen und Welt vor ein *fait accompli* zu stellen.

† *Graf Szoegeny an Ministerium des Aeussern in Wien.*

(307, Streng vertraulich.) *Berlin*, 27. *Juli* 1914.

Staatssekretär erklärte mir in streng vertraulicher Form sehr entschieden, dass in der nächsten Zeit eventuelle Vermittlungsvorschläge Englands durch die deutsche Regierung zur Kenntnis Euer Exc. gebracht würden.

Die deutsche Regierung versichere auf das Bündigste, *dass sie sich in keiner Weise mit den Vorschlägen identificire*, sogar entschieden gegen derer Berücksichtigung sei, und dieselben nur, um der englischen Bitte Rechnung zu tragen, weitergebe.

pursued against her or her allies by France, Russia, and ourselves, jointly or separately.' *

While comment upon these telegrams would only tend to weaken their force and effect, it may nevertheless be observed that the last of them was dated two days before the declaration of war by Germany against Russia, which might have been prevented, had not Germany, flushed with the hope of certain victory and of the fruits of conquest, determined to force the war.

The report of the Commission treats separately the violation of the neutrality of Belgium and of Luxemburg, and reaches the conclusion, in which the American Representatives concur, that the neutrality of both of these countries was deliberately violated. The American Representatives believe, however, that it is not enough to state or to hold with the Commission that 'the war was premeditated by the Central Powers,' that 'Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the *Entente* Powers and their repeated efforts to avoid war,' and to declare that the neutrality of Belgium, guaranteed by the Treaty of the 19th of April, 1839, and that of Luxemburg, guaranteed by the Treaty of the 11th of May, 1867, were deliberately violated by Germany and Austria-Hungary. They are of the opinion that these acts should be condemned in no uncertain terms and that their perpetrators should be held up to the execration of mankind.

II

The second question submitted by the Conference to the Commission requires an investigation of and a report upon 'the facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air, during the present war.' It has been deemed advisable to quote again the exact language of the submission in that it is at once the authority for and the limitation of the investigation and report to be made by the Commission. Facts were to be gathered, but these facts were to be not of a general but of a very specific kind, and were to relate to the violations or 'breaches of the laws and customs of war.' The duty of the Commission was, therefore, to determine whether the facts found were violations of the laws and customs of war. It was not asked whether these facts were

* British Parliamentary Papers, 'Miscellaneous, No. 10 (1915),' 'Collected Documents relating to the Outbreak of the European War,' p. 78.

violations of the laws or of the principles of humanity. Nevertheless, the report of the Commission does not, as in the opinion of the American Representatives it should, confine itself to the ascertainment of the facts and to their violation of the laws and customs of war, but, going beyond the terms of the mandate, declares that the facts found and acts committed were in violation of the laws and of the elementary principles of humanity. The laws and customs of war are a standard certain, to be found in books of authority and in the practice of nations. The laws and principles of humanity vary with the individual, which, if for no other reason, should exclude them from consideration in a court of justice, especially one charged with the administration of criminal law. The American Representatives, therefore, objected to the references to the laws and principles of humanity, to be found in the report, in what they believed was meant to be a judicial proceeding, as, in their opinion, the facts found were to be violations or breaches of the laws and customs of war, and the persons singled out for trial and punishment for acts committed during the war were only to be those persons guilty of acts which should have been committed in violation of the laws and customs of war. With this reservation as to the invocation of the principles of humanity, the American Representatives are in substantial accord with the conclusions reached by the Commission on this head that :

1. The war was carried on by the Central Empires, together with their Allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary principles of humanity.
2. A Commission should be created for the purpose of collecting and classifying systematically all the information already had or to be obtained, in order to prepare as complete a list of facts as possible concerning the violations of the laws and customs of war committed by the forces of the German Empire and its allies, on land, on sea, and in the air, in the course of the present war.

However, in view of the recommendation that a Commission be appointed to collect further information, the American Representatives believe that they should content themselves with a mere expression of concurrence as to the statements contained in the report upon which these conclusions are based.

III

The third question submitted to the Commission on Responsibilities requires an expression of opinion concerning 'the degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.' The conclusion which the Commission reached, and which is stated in the report, is to the effect that 'all persons belonging to enemy countries, however high their position may have been, without distinction of rank, including Chiefs of States, who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution.' The American Representatives are unable to agree with this conclusion, in so far as it subjects to criminal, and, therefore, to legal prosecution, persons accused of offences against 'the laws of humanity,' and in so far as it subjects Chiefs of States to a degree of responsibility hitherto unknown to municipal or international law, for which no precedents are to be found in the modern practice of nations.

Omitting for the present the question of criminal liability for offences against the laws of humanity, which will be considered in connection with the law to be administered in the national tribunals and the High Court, whose constitution is recommended by the Commission, and likewise reserving for discussion in connection with the High Court the question of the liability of a chief of State to criminal prosecution, a reference may properly be made in this place to the masterly and hitherto unanswered opinion of Chief Justice Marshall, in the case of the *Schooner Exchange* v. *McFaddon and Others* (7 Cranch, 116), decided by the Supreme Court of the United States in 1812, in which the reasons are given for the exemption of the sovereign and of the sovereign agent of a State from judicial process. This does not mean that the head of the State, whether he be called emperor, king, or chief executive, is not responsible for breaches of the law, but that he is responsible not to the judicial but to the political authority of his country. His act may and does bind his country and render it responsible for the acts which he has committed in its name and its behalf, or under cover of its authority; but he is, and it is submitted that he should be, only responsible to his country, as otherwise to hold would be to subject to foreign countries, a chief executive, thus withdrawing him from the laws of his country, even its organic law, to which he owes obedience, and subordinating him to foreign

jurisdictions to which neither he nor his country owes allegiance or obedience, thus denying the very conception of sovereignty.

But the law to which the head of the State is responsible is the law of his country, not the law of a foreign country or group of countries; the tribunal to which he is responsible is the tribunal of his country, not of a foreign country or group of countries, and the punishment to be inflicted is the punishment prescribed by the law in force at the time of the commission of the act, not a punishment created after the commission of the act.

These observations the American Representatives believe to be applicable to a head of a State actually in office and engaged in the performance of his duties. They do not apply to a head of a State who has abdicated or has been repudiated by his people. Proceedings against him might be wise or unwise, but in any event they would be against an individual out of office and not against an individual in office and thus in effect against the State.

The American Representatives also believe that the above observations apply to liability of the head of a State for violations of positive law in the strict and legal sense of the term. They are not intended to apply to what may be called political offences and to political sanctions.

These are matters for statesmen, not for judges, and it is for them to determine whether or not the violators of the Treaties guaranteeing the neutrality of Belgium and of Luxemburg should be subjected to a political sanction.

However, as questions of this kind seem to be beyond the mandate of the Conference, the American Representatives consider it unnecessary to enter upon their discussion.

IV

The fourth question calls for an investigation of and a report upon 'the constitution and procedure of a tribunal appropriate for the trial of these offences.' Apparently the Conference had in mind the violations of the laws and customs of war, inasmuch as the Commission is required by the third submission to report upon 'the degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs and other individuals, however highly placed.' The fourth point relates to the constitution and procedure of a tribunal appropriate for the investigation of these crimes, and to the trial and punishment of the persons accused of their commission, should they be found guilty. The Commission seems to have been of the

opinion that the tribunal referred to in the fourth point was to deal with the crimes specified in the second and third submissions, not with the responsibility of the authors of the war, as appears from the following statement taken from the report :—

> On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Luxemburg and of Belgium, the Commission is of the opinion that it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.

This section of the report, however, deals not only with the laws and customs of war—improperly adding 'and of the laws of humanity'—but also with the 'acts which provoked the war and accompanied its inception,' which either in whole or in part would appear to fall more appropriately under the first submission relating to the 'responsibility of the authors of the war.'

Of the acts which provoked the war and accompanied its inception, the Commission, with special reference to the violation of the neutrality of Luxemburg and of Belgium, says : 'We therefore do not advise that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal.' And a little later in the same section the report continues : 'The Commission is nevertheless of opinion that no criminal charge can be made against the responsible authorities or individuals, and notably the ex-Kaiser, on the special head of these breaches of neutrality, but the gravity of these gross outrages upon the law of nations and international good faith is such that the Commission thinks they should be the subject of a *formal condemnation by the Conference*.' The American Representatives are in thorough accord with these views, which are thus formally stated in the first two of the four conclusions under this heading :—

> The acts which brought about the war should not be charged against their authors or made the subject of proceedings before a tribunal.
>
> On the special head of the breaches of the neutrality of Luxemburg and Belgium, the gravity of these outrages upon the principles of the law of nations and upon international good faith is such that they should be made the subject of a formal condemnation by the Conference.

If the report had stopped here, the American Representatives would be able to concur in the conclusions under this heading and the reasoning by which they were justified, for hitherto the authors of war, however unjust it may be in the forum of morals, have not been brought before a court of justice upon a criminal charge for trial and punishment. The report specifically states : (1) that ' a war of aggression may not be considered as an act directly contrary to positive law, or one which can be successfully brought before a tribunal such as the Commission is authorised to consider under its Terms of Reference ' ; the Commission refuses to advise (2) ' that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal ' ; it further holds (3) that ' no criminal charge can be made against the responsible authorities or individuals, and notably the ex-Kaiser, on the special head of these breaches of neutrality.' The American Representatives, accepting each of these statements as sound and unanswerable, are nevertheless unable to agree with the third of the conclusions based upon them :—

> On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Belgium and Luxemburg, it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.

The American Representatives believe that this conclusion is inconsistent both with the reasoning of the section and with the first and second conclusions, and that ' in a matter so unprecedented,' to quote the exact language of the third conclusion, they are relieved from comment and criticism. However, they observe that, if the acts in question are criminal in the sense that they are punishable under law, they do not understand why the report should not advise that these acts be punished in accordance with the terms of the law. If, on the other hand, there is no law making them crimes or affixing a penalty for their commission, they are moral, not legal, crimes, and the American Representatives fail to see the advisability or indeed the appropriateness of creating a special organ to deal with the authors of such acts. In any event, the organ in question should not be a judicial tribunal.

In order to meet the evident desire of the Commission that a special organ be created, without however doing violence to their

own scruples in the premises, the American Representatives proposed—

The Commission on Responsibilities recommends that :—

1. A Commission of Inquiry be established to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.
2. The Commission of Inquiry consist of two members of the five following Powers : United States of America, British Empire, France, Italy, and Japan ; and one member from each of the five following Powers : Belgium, Greece, Portugal, Roumania, and Serbia.
3. The enemy be required to place their archives at the disposal of the Commission which shall forthwith enter upon its duties and report jointly and separately to their respective Governments on the 11th November, 1919, or as soon thereafter as practicable.

The Commission, however, failed to adopt this proposal.

The fourth and final conclusion under this heading declares it to be ' desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law.' With this conclusion the American Representatives find themselves to be in substantial accord. They believe that any nation going to war assumes a grave responsibility, and that a nation engaging in a war of aggression commits a crime. They hold that the neutrality of nations should be observed, especially when it is guaranteed by a treaty to which the nations violating it are parties, and that the plighted word and the good faith of nations should be faithfully observed in this as in all other respects. At the same time, given the difficulty of determining whether an act is in reality one of aggression or of defence, and given also the difficulty of framing penal sanctions, where the consequences are so great or may be so great as to be incalculable, they hesitate as to the feasibility of this conclusion, from which, however, they are unwilling formally to dissent.

With the portion of the report devoted to the ' constitution and procedure of a tribunal appropriate for the trial of these offences,' the American Representatives are unable to agree, and their views differ so fundamentally and so radically from those of the Commission that they found themselves obliged to oppose the views of their colleagues in the Commission and to dissent from the state-

ment of those views as recorded in the report. The American Representatives, however, agree with the introductory paragraph of this section, in which it is stated that 'every belligerent has, according to international law, the power and authority to try the individuals alleged to be guilty of the crimes' constituting violations of the laws and customs of war, 'if such persons have been taken prisoners or have otherwise fallen into its power.' The American Representatives are likewise in thorough accord with the further provisions that 'each belligerent has, or has power to set up, pursuant to its own legislation, an appropriate tribunal, military or civil, for the trial of such cases.' The American Representatives concur in the view that 'these courts would be able to try the incriminated persons according to their own procedure,' and also in the conclusion that 'much complication and consequent delay would be avoided which would arise if all such cases were to be brought before a single tribunal,' supposing that the single tribunal could and should be created. In fact, these statements are not only in accord with but are based upon the memorandum submitted by the American Representatives, advocating the utilisation of the military commissions or tribunals either existing or which could be created in each of the belligerent countries, with jurisdiction to pass upon offences against the laws and customs of war committed by the respective enemies.

This memorandum already referred to in an earlier paragraph is as follows :—

1. That the military authorities, being charged with the interpretation of the laws and customs of war, possess jurisdiction to determine and punish violations thereof ;
2. That the military jurisdiction for the trial of persons accused of violations of the laws and customs of war and for the punishment of persons found guilty of such offences is exercised by military tribunals ;
3. That the jurisdiction of a military tribunal over a person accused of the violation of a law or custom of war is acquired when the offence was committed on the territory of the nation creating the military tribunal or when the person or property injured by the offence is of the same nationality as the military tribunal ;
4. That the law and procedure to be applied and followed in determining and punishing violations of the laws and customs of war are the law and the procedure for determin-

ing and punishing such violations established by the military law of the country against which the offence is committed ; and

5. That in case of acts violating the laws and customs of war involving more than one country, the military tribunals of the countries affected may be united, thus forming an international tribunal for the trial and punishment of persons charged with the commission of such offences.

In a matter of such importance affecting not one but many countries and calculated to influence their future conduct, the American Representatives believed that the nations should use the machinery at hand, which had been tried and found competent, with a law and a procedure framed and therefore known in advance, rather than to create an international tribunal with a criminal jurisdiction for which there is no precedent, precept, practice, or procedure. They further believed that, if an act violating the laws and customs of war committed by the enemy affected more than one country, a tribunal could be formed of the countries affected by uniting the national commissions or courts thereof, in which event the tribunal would be formed by the mere assemblage of the members, bringing with them the law to be applied, namely, the laws and customs of war, and the procedure, namely, the procedure of the national commissions or courts. The American Representatives had especially in mind the case of Henry Wirz, commandant of the Confederate prison at Andersonville, Georgia, during the war between the States, who after that war was tried by a military commission, sitting in the city of Washington, for crimes contrary to the laws and customs of war, convicted thereof, sentenced to be executed, and actually executed on the 11th November, 1865.

While the American Representatives would have preferred a national military commission or court in each country, for which the Wirz case furnished ample precedent, they were willing to concede that it might be advisable to have a commission of representatives of the competent national tribunals to pass upon charges, as stated in the report :—

(*a*) Against persons belonging to enemy countries who have committed outrages against a number of civilians and soldiers of several Allied nations, such as outrages committed in prison camps where prisoners of war of several nations were congregated or the crime of forced labour

in mines where prisoners of more than one nationality were forced to work.

(*b*) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front, but whose orders affected the conduct towards several of the Allied armies.

The American Representatives are, however, unable to agree that a mixed commission thus composed should, in the language of the report, entertain charges :—

(*c*) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the Heads of States, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war, it being understood that no such abstention shall constitute a defence for the actual perpetrators.

In an earlier stage of the general report, indeed, until its final revision, such persons were declared liable because they 'abstained from preventing, putting an end to, or repressing, violations of the laws or customs of war.' To this criterion of liability the American Representatives were unalterably opposed. It is one thing to punish a person who committed, or, possessing the authority, ordered others to commit an act constituting a crime ; it is quite another thing to punish a person who failed to prevent, to put an end to, or to repress violations of the laws or customs of war. In one case the individual acts or orders others to act, and in so doing commits a positive offence. In the other he is to be punished for the acts of others without proof being given that he knew of the commission of the acts in question or that, knowing them, he could have prevented their commission. To establish responsibility in such cases it is elementary that the individual sought to be punished should have knowledge of the commission of the acts of a criminal nature and that he should have possessed the power as well as the authority to prevent, to put an end to, or repress them. Neither knowledge of commission nor ability to prevent is alone sufficient. The duty or obligation to act is essential. They must exist in conjunction, and a standard of liability which does not include them all is to be rejected. The difficulty in the matter of abstention was felt by the Commission, as to make abstention

punishable might tend to exonerate the person actually committing the act. Therefore the standard of liability to which the American Representatives objected was modified in the last sessions of the Commission, and the much less objectionable text, as stated above, was adopted and substituted for the earlier and wholly inadmissible one.

There remain, however, two reasons, which, if others were lacking, would prevent the American Representatives from consenting to the tribunal recommended by the Commission. The first of these is the uncertainty of the law to be administered, in that liability is made to depend not only upon violations of the laws and customs of war, but also upon violations 'of the laws of humanity.' The second of these reasons is that Heads of States are included within the civil and military authorities of the enemy countries to be tried and punished for violations of the laws and customs of war and of the laws of humanity. The American Representatives believe that the Commission has exceeded its mandate in extending liability to violations of the laws of humanity, inasmuch as the facts to be examined are solely violations of the laws and customs of war. They also believe that the Commission erred in seeking to subject Heads of States to trial and punishment by a tribunal to whose jurisdiction they were not subject when the alleged offences were committed.

As pointed out by the American Representatives on more than one occasion, war was and is by its very nature inhuman, but acts consistent with the laws and customs of war, although these acts are inhuman, are nevertheless not the object of punishment by a court of justice. A judicial tribunal only deals with existing law and only administers existing law, leaving to another forum infractions of the moral law and actions contrary to the laws and principles of humanity. A further objection lies in the fact that the laws and principles of humanity are not certain, varying with time, place, and circumstance, and according, it may be, to the conscience of the individual judge. There is no fixed and universal standard of humanity. The law of humanity, or the principle of humanity, is much like equity, whereof John Selden, as wise and cautious as he was learned, aptly said :

'Equity is a roguish thing. For Law we have a measure, know what to trust to ; Equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is Equity. 'Tis all one as if they should make the standard for the measure we call a 'foot' a Chancellor's foot ; what an uncertain measure

would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot. 'Tis the same thing in the Chancellor's conscience.'

While recognising that offences against the laws and customs of war might be tried before and the perpetrators punished by national tribunals, the Commission was of the opinion that the graver charges and those involving more than one country should be tried before an international body, to be called the High Tribunal, which 'shall be composed of three persons appointed by each of the following Governments:—The United States of America, the British Empire, France, Italy, and Japan, and one person appointed by each of the following Governments: Belgium, Greece, Poland, Portugal, Roumania, Serbia, and Czecho-Slovakia'; the members of this tribunal to be selected by each country 'from among the members of their national courts or tribunals, civil or military, and now in existence or erected as indicated above.' The law to be applied is declared by the Commission to be 'the principles of the law of nations as they result from the usages established among civilised peoples, from the laws of humanity and from the dictates of public conscience.' The punishment to be inflicted is that which may be imposed 'for such an offence or offences by any court in any country represented on the tribunal or in the country of the convicted person.' The cases selected for trial are to be determined and the prosecutions directed by 'a prosecuting commission' composed of a representative of the United States of America, the British Empire, France, Italy, and Japan, to be assisted by a representative of one of the other Governments, presumably a party to the creation of the court or represented in it.

The American Representatives felt very strongly that too great attention could not be devoted to the creation of an international criminal court for the trial of individuals, for which a precedent is lacking, and which appears to be unknown in the practice of nations. They were of the opinion that an act could not be a crime in the legal sense of the word, unless it were made so by law, and that the commission of an act declared to be a crime by law could not be punished unless the law prescribed the penalty to be inflicted. They were perhaps more conscious than their colleagues of the difficulties involved, inasmuch as this question was one that had arisen in the American Union composed of States, and where it had been held in the leading case of *United States* v. *Hudson* (7 Cranch 32), decided by the Supreme Court of the United States in 1812, that 'the legislative authority of the Union must first

make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence.' What is true of the American States must be true of this looser union which we call the Society of Nations. The American Representatives know of no international statute or convention making a violation of the laws and customs of war—not to speak of the laws or principles of humanity—an international crime, affixing a punishment to it, and declaring the court which has jurisdiction over the offence. They felt, however, that the difficulty, however great, was not insurmountable, inasmuch as the various States have declared certain acts violating the laws and customs of war to be crimes, affixing punishments to their commission, and providing military courts or commissions within the respective States possessing jurisdiction over such offence. They were advised that each of the Allied and Associated States could create such a tribunal, if it had not already done so. Here then was at hand a series of existing tribunal or tribunals that could lawfully be called into existence in each of the Allied or Associated countries by the exercise of their sovereign powers, appropriate for the trial and punishment within their respective jurisdictions of persons of enemy nationality, who during the war committed acts contrary to the laws and customs of war, in so far as such acts affected the persons or property of their subjects or citizens, whether such acts were committed within portions of their territory occupied by the enemy or by the enemy within its own jurisdiction.

The American Representatives therefore proposed that acts affecting the persons or property of one of the Allied or Associated Governments should be tried by a military tribunal of that country; that acts involving more than one country, such as treatment by Germany of prisoners contrary to the usages and customs of war, could be tried by a tribunal either made up of the competent tribunals of the countries affected or of a commission thereof possessing their authority. In this way existing national tribunals or national commissions which could legally be called into being would be utilised, and not only the law and the penalty would be already declared, but the procedure would be settled.

It seemed elementary to the American Representatives that a country could not take part in the trial and punishment of a violation of the laws and customs of war committed by Germany and her Allies before the particular country in question had become a party to the war against Germany and her Allies; that consequently the United States could not institute a military tribunal

within its own jurisdiction to pass upon violations of the laws and customs of war, unless such violations were committed upon American persons or American property, and that the United States could not properly take part in the trial and punishment of persons accused of violations of the laws and customs of war committed by the military or civil authorities of Bulgaria or Turkey.

Under these conditions and with these limitations the American Representatives considered that the United States might be a party to a High Tribunal, which they would have preferred to call, because of its composition, the Mixed or United Tribunal or Commission. They were averse to the creation of a new tribunal, of a new law, of a new penalty, which would be *ex post facto* in nature, and thus contrary to an express clause of the Constitution of the United States and in conflict with the law and practice of civilised communities. They believed, however, that the United States could co-operate to this extent by the utilisation of existing tribunals, existing laws, and existing penalties. However, the possibility of co-operating was frustrated by the insistence on the part of the majority that criminal liability should, in excess of the mandate of the Conference, attach to the laws and principles of humanity, in addition to the laws and customs of war, and that the jurisdiction of the High Court should be specifically extended to ' the heads of States.'

In regard to the latter point, it will be observed that the American Representatives did not deny the responsibility of the heads of States for acts which they may have committed in violation of law, including, in so far as their country is concerned, the laws and customs of war, but they held that heads of States are, as agents of the people, in whom the sovereignty of any State resides, responsible to the people for the illegal acts which they may have committed, and that they are not and that they should not be made responsible to any other sovereignty.

The American Representatives assumed, in debating this question, that from a legal point of view the people of every independent country are possessed of sovereignty, and that that sovereignty is not held in that sense by rulers ; that the sovereignty which is thus possessed can summon before it any person, no matter how high his estate, and call upon him to render an account of his official stewardship ; that the essence of sovereignty consists in the fact that it is not responsible to any foreign sovereignty ; that in the exercise of sovereign powers which have been conferred upon him by the people, a monarch or head of State acts as their

agent ; that he is only responsible to them ; and that he is responsible to no other people or group of people in the world.

The American Representatives admitted that from the moral point of view the head of a State, be he termed emperor, king, or chief executive, is responsible to mankind, but that from the legal point of view they expressed themselves as unable to see how any member of the Commission could claim that the head of a State exercising sovereign rights is responsible to any but those who have confided those rights to him by consent expressed or implied.

The majority of the Commission, however, was not influenced by the legal argument. They appeared to be fixed in their determination to try and punish by judicial process the 'ex-Kaiser' of Germany. That there might be no doubt about their meaning, they insisted that the jurisdiction of the High Tribunal whose constitution they recommended should include the heads of States, and they therefore inserted a provision to this effect in express words in the clause dealing with the jurisdiction of the tribunal.

In view of their objections to the uncertain law to be applied, varying according to the conception of the members of the High Court as to the laws and principles of humanity, and in view also of their objections to the extent of the proposed jurisdiction of that tribunal, the American Representatives were constrained to decline to be a party to its creation. Necessarily they declined the proffer on behalf of the Commission that the United States should take part in the proceedings before that tribunal, or to have the United States represented in the prosecuting commission charged with the 'duty of selecting the cases for trial before the tribunal and of directing and conducting prosecutions before it.' They therefore refrained from taking further part either in the discussion of the constitution or of the procedure of the tribunal.

It was an ungracious task for the American Representatives to oppose the views of their colleagues in the matter of the trial and punishment of heads of States, when they believed as sincerely and as profoundly as any other member that the particular heads of States in question were morally guilty, even if they were not punishable before an international tribunal, such as the one proposed, for the acts which they themselves had committed or with whose commission by others they could be justly taxed. It was a matter of great regret to the American Representatives that they found themselves subjected to criticism, owing to their objection to declaring the laws and principles of humanity as a standard whereby the acts of their enemies should be measured and punished

by a judicial tribunal. Their abhorrence for the acts of the heads of States of enemy countries is no less genuine and deep than that of their colleagues, and their conception of the laws and principles of humanity is, they believe, not less enlightened than that of their colleagues. They considered that they were dealing solely with violations of the laws and customs of war, and that they were engaged under the mandate of the Conference in creating a tribunal in which violations of the laws and customs of war should be tried and punished. They therefore confined themselves to law in its legal sense, believing that in so doing they accorded with the mandate of submission, and that to have permitted sentiment or popular indignation to affect their judgment would have been violative of their duty as members of the Commission on Responsibilities.

They submit their views, rejected by the Commission, to the Conference, in full confidence that it is only through the administration of law, enacted and known before it is violated, that justice may ultimately prevail internationally, as it actually does between individuals in all civilised nations.

Memorandum on the Principles which should Determine Inhuman and Improper Acts of War

To determine the principles which should be the standard of justice in measuring the charge of inhuman or atrocious conduct during the prosecution of a war, the following propositions should be considered :—

1. Slaying and maiming men in accordance with generally accepted rules of war are from their nature cruel and contrary to the modern conception of humanity.

2. The methods of destruction of life and property in conformity with the accepted rules of war are admitted by civilised nations to be justifiable and no charge of cruelty, inhumanity, or impropriety lies against a party employing such methods.

3. The principle underlying the accepted rules of war is the necessity of exercising physical force to protect national safety or to maintain national rights.

4. Reprehensible cruelty is a matter of degree which cannot be justly determined by a fixed line of distinction, but one which fluctuates in accordance with the facts in each case, but the manifest departure from accepted rules and customs of war imposes

upon the one so departing the burden of justifying his conduct, as he is *prima facie* guilty of a criminal act.

5. The test of guilt in the perpetration of an act, which would be inhuman or otherwise reprehensible under normal conditions, is the necessity of that act to the protection of national safety or national rights measured chiefly by actual military advantage.

6. The assertion by the perpetrator of an act that it is necessary for military reasons does not exonerate him from guilt if the facts and circumstances present reasonably strong grounds for establishing the needlessness of the act or for believing that the assertion is not made in good faith.

7. While an act may be essentially reprehensible and the perpetrator entirely unwarranted in assuming it to be necessary from a military point of view, he must not be condemned as wilfully violating the laws and customs of war or the principles of humanity unless it can be shown that the act was wanton and without reasonable excuse.

8. A wanton act which causes needless suffering (and this includes such causes of suffering as destruction of property, deprivation of necessaries of life, enforced labour, &c.) is cruel and criminal. The full measure of guilt attaches to a party who without adequate reason perpetrates a needless act of cruelty. Such an act is a crime against civilisation, which is without palliation.

9. It would appear, therefore, in determining the criminality of an act, that there should be considered the wantonness or malice of the perpetrator, the needlessness of the act from a military point of view, the perpetration of a justifiable act in a needlessly harsh or cruel manner, and the improper motive which inspired it.

ROBERT LANSING.
JAMES BROWN SCOTT.

ANNEX III

Reservations by the Japanese Delegation

The Japanese Delegates on the Commission on Responsibilities are convinced that many crimes have been committed by the enemy in the course of the present war in violation of the fundamental principles of international law, and recognise that the principal responsibility rests upon individual enemies in high places. They are consequently of opinion that, in order to re-establish for the future the force of the principles thus infringed, it is important to

discover practical means for the punishment of the persons responsible for such violations.

A question may be raised whether it can be admitted as a principle of the law of nations that a High Tribunal constituted by belligerents can, after a war is over, try an individual belonging to the opposite side, who may be presumed to be guilty of a crime against the laws and customs of war. It may further be asked whether international law recognises a penal law as applicable to those who are guilty.

In any event, it seems to us important to consider the consequences which would be created in the history of international law by the prosecution for breaches of the laws and customs of war of enemy heads of States before a tribunal constituted by the opposite party.

Our scruples become still greater when it is a question of indicting before a tribunal thus constituted highly-placed enemies on the sole ground that they abstained from preventing, putting an end to, or repressing acts in violation of the laws and customs of war, as is provided in clause (*c*) of section (*b*) of Chapter IV.

It is to be observed that to satisfy public opinion of the justice of the decision of the appropriate tribunal, it would be better to rely upon a strict interpretation of the principles of penal liability, and consequently not to make cases of abstention the basis of such responsibility.

In these circumstances the Japanese Delegates thought it possible to adhere, in the course of the discussions in the Commission, to a text which would eliminate from clause (*c*) of section (*b*) of Chapter IV both the words 'including the heads of States,' and the provision covering cases of abstention, but they feel some hesitation in supporting the amended form which admits a criminal liability where the accused, with knowledge and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to, or repressing acts in violation of the laws and customs of war.

The Japanese Delegates desire to make clear that, subject to the above reservations, they are disposed to consider with the greatest care every suggestion calculated to bring about unanimity in the Commission.

M. ADATCI.
S. TACHI.

April 4, 1919.

ANNEX IV

Provisions for Insertion in Treaties with Enemy Governments

Article I

The *Enemy* Government admits that even after the conclusion of peace, every Allied and Associated State may exercise, in respect of any enemy or former enemy, the right which it would have had during the war to try and punish any enemy who fell within its power and who had been guilty of a violation of the principles of the law of nations as these result from the usages established among civilised peoples, from the laws of humanity and from the dictates of public conscience.

Article II

The *Enemy* Government recognises the right of the Allied and Associated States, after the conclusion of peace, to constitute a High Tribunal composed of members named by the Allied and Associated States in such numbers and in such proportions as they may think proper, and admits the jurisdiction of such tribunal to try and punish enemies or former enemies guilty during the war of violations of the principles of the law of nations as these result from the usages established among civilised peoples, from the laws of humanity and from the dictates of public conscience. It agrees that no trial or sentence by any of its own courts shall bar trial and sentence by the High Tribunal or by a national court belonging to one of the Allied or Associated States.

Article III

The *Enemy* Government recognises the right of the High Tribunal to impose upon any person found guilty the punishment or punishments which may be imposed for such an offence or offences by any court in any country represented on the High Tribunal or in the country of the convicted person. The *Enemy* Government will not object to such punishment or punishments being carried out.

Article IV

The *Enemy* Government agrees, on the demand of any of the Allied or Associated States, to take all possible measures for the purpose of the delivery to the designated authority, for trial by the High Tribunal or, at its instance, by a national court of one of such Allied or Associated States, of any person alleged to be guilty

of an offence against the laws and customs of war or the laws of humanity who may be in its territory or otherwise under its direction or control. No such person shall in any event be included in any amnesty or pardon.

Article V

The *Enemy* Government agrees, on the demand of any of the Allied or Associated States, to furnish to it the name of any person at any time in its service who may be described by reference to his duties or station during the war or by reference to any other description which may make his identification possible and further agrees to furnish such other information as may appear likely to be useful for the purpose of designating the persons who may be tried before the High Tribunal or before one of the national courts of an Allied or Associated State for a crime against the laws and customs of war or the laws of humanity.

Article VI

The *Enemy* Government agrees to furnish, upon the demand of any Allied or Associated State, all General Staff plans of campaign, orders, instructions, reports, logs, charts, correspondence, proceedings of courts, tribunals or investigating bodies, or such other documents or classes of documents as any Allied or Associated State may request as being likely to be useful for the purpose of identifying or as evidence for or against any person, and upon demand as aforesaid to furnish copies of any such documents.

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